



1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (Amended After Comments)

5 401 KAR 42:250. Petroleum Storage Tank Environmental Assurance Fund Reimbursement
6 Procedures.

7 RELATES TO: KRS 224.01-400, 224.01-405, 224.60-120, 224.60-130, 224.60-135,
8 224.60-140, 224.60-150

9 STATUTORY AUTHORITY: KRS 224.60-120(6), 224.60-130 (1)(a)-(e)

10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-130(1)(a) through (e)
11 requires the establishment of the procedures to administer the Petroleum Storage Tank
12 Environmental Assurance Fund (PSTEAF). This administrative regulation establishes those
13 procedures.

14 Section 1. Applicability. (1) This administrative regulation establishes eligibility
15 requirements and procedures for a petroleum storage tank owner or operator to make application,
16 become an eligible applicant, and receive reimbursement from the cabinet for the cost of
17 corrective action due to a release from a petroleum storage tank. Federal and state-owned
18 facilities shall not be eligible for reimbursement from the PSTEAF.

1 (2) Eligible reimbursement for actions directed by the Underground Storage Tank Branch
2 prior to the effective date of this administrative regulation shall be made in accordance with the
3 administrative regulations in effect at the time the directive was issued.

4 Section 2. Application for Assistance. (1) A petroleum storage tank owner or operator
5 seeking reimbursement from either the Financial Responsibility Account or the Petroleum
6 Storage Tank Account, shall:

7 (a) Have a Certificate of Registration and Reimbursement Eligibility, in accordance with
8 401 KAR 42:020, or a Certificate of Eligibility, issued prior to September 13, 2006, which
9 indicates that the petroleum storage tank owner or operator is eligible to participate in the
10 Petroleum Storage Tank Environmental Assurance for the associated UST Facility;

11 (b) Apply for assistance.

12 1. A petroleum storage tank owner or operator seeking reimbursement, who has not
13 submitted an Application for Assistance, shall submit a completed Application for Assistance,
14 DEP 6063, including all required attachments.

15 2. Certify in the Application for Assistance that:

16 a. A contract has been entered into and submitted in accordance with Section 3 of this
17 administrative regulation; and

18 b. A release requiring corrective action from an eligible facility has occurred and has
19 been reported to the cabinet; or

20 c. A written directive from the Underground Storage Tank Branch has been issued for the
21 performance of a site check, in accordance with 401 KAR 42:050.

1 (c) Provide a written notice, in accordance with 401 KAR 42:070, to the applicable
2 regional office at least fourteen (14) calendar days prior to commencement of the permanent
3 closure of the petroleum storage tank to maintain eligibility for reimbursement.

4 (2) If an Application for Assistance is determined to be deficient by the Underground
5 Storage Tank Branch, a written deficiency letter, outlining the deficiencies, shall be issued to the
6 applicant.

7 (a) Failure by the applicant to provide the requested information and documentation
8 within thirty (30) days of receipt of the request shall cause the application to be denied.

9 (b) If an extension beyond the thirty (30) days is necessary, the extension request shall be
10 submitted in writing to the Underground Storage Tank Branch prior to the deadline.

11 (c) Denial of the Application for Assistance shall not prevent the petroleum storage tank
12 owner or operator from reapplying if the requested documentation becomes available.

13 (3) If the applicant meets the requirements of subsection (1) of this section, the
14 Underground Storage Tank Branch shall:

15 (a) Determine the eligibility of the applicant to receive reimbursement from either the
16 Financial Responsibility Account or the Petroleum Storage Tank Account according to Section 4
17 of this administrative regulation; and

18 (b) Approve the Application for Assistance.

19 (4) Reimbursement pursuant to an approved Application for Assistance shall be restricted
20 to:

21 (a) Actions directed in writing by the Underground Storage Tank Branch; and

22 (b) Initial abatement actions taken at a facility in accordance with Section 2 of the
23 Release Response and Initial Abatement Requirements Outline, incorporated by reference in 401

KAR 42:060, subject to the reimbursement provisions of Section 2.14 of the Contractor Cost Outline, prior to a written directive from the Underground Storage Tank Branch, and not declared an environmental emergency by the cabinet; or

(5) If the petroleum storage tank owner or operator seeking reimbursement from the PSTEAF changes, and shall assume responsibility for the compliance with 401 KAR Chapter 42, the new petroleum storage tank owner or operator shall:

(a) Submit an amended UST Facility Registration Form, DEP7112, in accordance with 401 KAR 42:020, Section 4 indicating a change in petroleum storage tank owner or operator; and

(b) Submit an amended Application for Assistance, DEP6063, including all required attachments, within thirty (30) days of the transfer of the facility.

(6) To maintain eligibility for participation in and reimbursement from the PSTEAF, the petroleum storage tank owner or operator shall maintain compliance with the requirements of this administrative regulation.

Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a contract from the eligible company or partnership to be eligible for reimbursement from the cabinet for the performance of corrective action or site check activities for a facility.

(2) The contract shall be executed prior to commencing corrective action or site check activities.

(3) If a contract is revised, a copy of the revised contract shall be submitted to the Underground Storage Tank Branch within thirty (30) days of the revised contract execution.

(4) If a contract is terminated, and a new contract is executed:

1 (a) A notarized Affidavit of Termination of Contract, DEP 0061 by the petroleum storage
2 tank owner or operator approved for PSTEAF reimbursement shall be submitted to the
3 Underground Storage Tank Branch; and

4 (b) A copy of the newly-executed contract shall be submitted to the Underground Storage
5 Tank Branch prior to commencing corrective action or site check activities.

6 Section 4. Account Placement. (1) A petroleum storage tank owner or operator shall be
7 eligible to receive reimbursement for corrective action costs, site checks activities directed in
8 writing by the Underground Storage Tank Branch after September 13, 2006, that do not confirm
9 contamination above applicable screening[allowable] levels, and third-party claims in
10 accordance with 401 KAR 42:300, incurred on or after April 9, 1990, from the Financial
11 Responsibility Account if the Underground Storage Tank Branch determines the petroleum
12 storage tank owner or operator has satisfied the following requirements:

13 (a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in
14 accordance with 401 KAR 42:020 prior to the release requiring corrective action or site check
15 activities;

16 (b) Received a Certificate of Registration and Reimbursement Eligibility for the
17 petroleum storage tanks, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued prior
18 to September 13, 2006 prior to the release requiring corrective action or site check activities;

19 (c) Maintained UST system release detection as required by 401 KAR 42:040. A
20 petroleum storage tank permanently or temporarily closed in accordance with 401 KAR 42:070,
21 shall have maintained compliance with UST system release detection requirements prior to the
22 permanent or temporary closure of the system;

23 (d) Maintained corrosion protection in accordance with 401 KAR 42:030 and 42:070;

1 (e) Maintained overfill and spill prevention in accordance with 401 KAR 42:030 for
2 those tanks in operation after December, 22, 1998;

3 (f) Reported the release to the cabinet in accordance with KRS 224.01-400 and 401 KAR
4 42:050;

5 (g) Performed initial abatement procedures as required by the Release Response and
6 Initial Abatement Requirements Outline, incorporated by reference in 401 KAR 42:060; and

7 (h) Filed a Notice of Intent to Permanently Close Underground Storage Tank System,
8 DEP 7114, incorporated by reference in 401 KAR 42:070, if applicable, with the cabinet to
9 permanently close the petroleum storage tanks at the facility or to make a change in service in
10 accordance with 401 KAR 42:070.

11 (2) A petroleum storage tank owner or operator who is not eligible for participation in the
12 Financial Responsibility Account, shall be eligible for reimbursement from the Petroleum
13 Storage Tank Account for corrective action costs, incurred on or after April 9, 1990, or site
14 check activities directed in writing by the Underground Storage Tank Branch after September 13,
15 2006, that do not confirm contamination above **applicable screening**[allowable] levels, if the
16 Underground Storage Tank Branch determines the petroleum storage tank owner or operator has
17 satisfied the following requirements:

18 (a) Registered the petroleum storage tanks with the Underground Storage Tank Branch in
19 accordance with 401 KAR 42:020;

20 (b) Filed a Notice of Intent to Permanently Close Underground Storage Tank System,
21 DEP7114, with the cabinet to permanently close the petroleum storage tanks a the facility, if
22 applicable, or to make a change in service, if applicable, in accordance with 401 KAR 42:070;

23 and

1 (c) Reported a release to the cabinet in accordance with KRS 224.01-400 and 401 KAR
2 42:050.

3 (3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for
4 third-party coverage.

5 Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage
6 Tank Account. (1) For facilities with releases confirmed after September 13, 2006, a petroleum
7 storage tank owner's or operator's entry level, as established in KRS 224.60-120(1), shall be
8 deducted from the eligible reimbursement except as provided in subsection (3) of this section.

9 (2) An entry level shall be assessed upon confirmation of a release, constituting an
10 occurrence, that requires corrective action for which the applicant is seeking reimbursement
11 through the Financial Responsibility Account or Petroleum Storage Tank Account in accordance
12 with subsection (1) of this section regardless of a petroleum storage tank owner's participation in
13 the Small Owner Tank Removal Account in accordance with 401 KAR 42:330; and

14 (3) The entry level shall not be deducted from the eligible reimbursement if the petroleum
15 storage tank owner or operator is directed by the Underground Storage Tank Branch to perform a
16 site check, in accordance with 401 KAR 42:060, that does not confirm contamination requiring
17 further action in accordance with 401 KAR Chapter 42.

18 (4) Upon request by the petroleum storage tank owner or operator, the Underground
19 Storage Tank Branch shall reimburse, upon final payment, twenty-five (25) percent of the entry
20 level if the petroleum storage tank owner or operator has:

21 (a) Completed corrective action at the facility within:

22 1. 180 days from the discovery of the release, for soil contamination only; or

1 2. Twenty-four (24) months from the discovery of the release, for groundwater
2 contamination only or both soil and groundwater contamination; and

3 (b) Received a no further action letter without additional measures being required for an
4 occurrence associated with the submittal of an Application for Assistance.

5 (5) The applicable entry level shall be determined, in accordance with KRS 224.60-
6 120(1), based on the number of tanks owned by the petroleum storage tank owner or operator at
7 the time of the occurrence associated with the submittal of an Application for Assistance.

8 Section 6. Newly-Discovered Underground Storage Tank Systems. (1) A newly-
9 discovered underground storage tank system encountered at a facility during the performance of
10 corrective action due to a release from a registered petroleum storage tank shall not affect a
11 petroleum storage tank owner's or operator's account placement eligibility.

12 (2) The number of newly-discovered tanks shall not increase the entry level of the
13 petroleum storage tank owner or operator.

14 Section 7. Procedures for Establishing the Reimbursable Amount for a Written Directive
15 issued by the Underground Storage Tank Branch. (1) The reimbursable amount established for
16 the completion of a written directive issued by the Underground Storage Tank Branch shall be
17 based on the following:

18 (a) The formulated task rates established in Section 2.0 of the Contractor Cost Outline;

19 (b) A cost estimate submitted by the owner or operator, in accordance with subsection (2)
20 of this section, for a specific task, including applicable materials, that does not have a formulated
21 task rate in the Contractor Cost Outline; or

22 (c) A combination of (a) and (b) of this subsection.

1 (2) When directed in writing by the Underground Storage Tank Branch, a cost estimate
2 shall be submitted by the owner or operator, for a specific task that does not have a formulated
3 task rate. The cost estimate shall:

4 (a) Include a cost itemization to complete the individual task for which a formulated task
5 rate has not been established if the task is being completed by the eligible company or
6 partnership or by a subcontractor which shall be calculated using those personnel and equipment
7 rates established in Section 3 of the Contractor Cost Outline applicable to individual components
8 of the task;

9 (b) Include three (3) bids from suppliers or manufactures of corrective action equipment
10 for individual equipment purchase or rental, exceeding \$3,000.00, containing a description of the
11 equipment to be purchased or rented and the anticipated salvage value provided by the supplier
12 or manufacturer for new equipment purchased;

13 (c) Include an estimate for materials to be purchased;

14 (d) Be submitted on the Cost Estimate Form, DEP 6090; and

15 (e) Include the required supporting documentation identified within the Cost Estimate
16 Form, DEP 6090.

17 (3) The Underground Storage Tank Branch shall, based on the applicable rates
18 established in the Contractor Cost Outline and the completed Cost Estimate Form, DEP 6090,
19 submitted, if applicable, establish the reimbursable amount in a written directive.

20 (4) The cabinet shall attach to the written directive the following:

21 (a) An itemization of the reimbursable amount; and

22 (b) The USTB Written Directive Claim Request Form, DEP 6091;

1 (5) The issuance of a written directive by the Underground Storage Tank Branch shall,
2 subject to the provisions of Section 8 of this administrative regulation, constitute an obligation
3 and guarantee of payment of the reimbursable amount identified within a written directive, in
4 accordance with KRS 224.60-140(5).

5 (6) The reimbursable amount established by the Underground Storage Tank Branch in a
6 written directive shall, as applicable, and in accordance with the Contractor Cost Outline, be
7 adjusted as follows upon compliance by the eligible applicant with Section 8 of this
8 administrative regulation:

9 (a) The reimbursable amount for over-excavation identified in the written directive issued
10 by the Underground Storage Tank Branch is an estimate of the tonnage to be removed, and shall
11 be based on the volume and density of material in the proposed excavation area. The
12 Underground Storage Tank branch shall convert cubic yardage to tons using a density of one and
13 one-half (1.5) tons per cubic yard. The reimbursable amount shall be adjusted based on:

14 1. The tonnage verified through the submittal of weigh tickets; or

15 2. If soil is disposed of at a permitted disposal facility incapable of providing weigh
16 tickets, a calculation of the tonnage associated with the actual area and depth of over-excavation,
17 not to exceed the tonnage estimate identified in the written directive from the Underground
18 Storage Tank Branch; and

19 3. Reimbursement for the removal, transportation and disposal of water encountered
20 within the over-excavation shall be contingent upon analytical confirmation that contaminant
21 levels within the water exceed the applicable groundwater screening levels, and the reimbursable
22 amount for water removed, transported and disposed shall be based on the quantity of water
23 disposed, as documented by disposal manifests and limited to one (1) pit volume;

1 (b) The reimbursable amount for a Dual Phase Extraction Event identified in a written
2 directive issued by the Underground Storage Tank Branch shall be adjusted to include the
3 amount of water disposed as documented by disposal manifests, or the amount of water verified
4 by the eligible company or partnership as being treated on site;

5 (c) The reimbursable amount for Operation and Maintenance of an approved remediation
6 system shall be adjusted to include the actual cost of utilities as documented by invoices
7 submitted;

8 (d) If the Underground Storage Tank Branch has not received and approved the
9 Application for Assistance, DEP 6063, prior to the issuance of the written directive, the
10 reimbursable amount identified in the written directive issued shall not include the applicable
11 formulated task rates for mobilization, per diem and field equipment cost. The Underground
12 Storage Tank Branch shall add the applicable formulated task rates for mobilization, per diem,
13 and field equipment to the reimbursable amount, in accordance with the Contractor Cost Outline
14 once an approved Application for Assistance is submitted; or

15 (e) If the Underground Storage Tank Branch has not received a signed contract between
16 the eligible applicant and the eligible company or partnership prior to the issuance of the written
17 directive, the reimbursable amount identified in the written directive issued shall not include the
18 applicable formulated task rates for mobilization, per diem, and field equipment cost. The
19 Underground Storage Tank Branch shall add the applicable formulated task rates for
20 mobilization, per diem, and field equipment to the reimbursable amount, in accordance with the
21 Contractor Cost Outline, once the requirements of Section 3 of this administrative regulation are
22 met.

1 (f) If a written directive issued by the Underground Storage Tank Branch cannot be
2 complied with to the extent necessary to achieve a technically complete determination by the
3 Underground Storage Tank Branch, in accordance with the Corrective Action Outline, for
4 reasons beyond the control of the applicant and eligible company or partnership, the previously
5 approved reimbursement amount established in the written directive shall, unless otherwise
6 addressed in the written directive, be adjusted by the Underground Storage Tank Branch, with
7 reference to the Contractor Cost Outline and the cost estimate submitted on the Cost Estimate
8 Form, DEP 6090, as applicable, to deduct the cost of actions not completed;

9 (g) If a written directive issued by the Underground Storage Tank Branch cannot be
10 completed, based upon omissions, misrepresentations, or otherwise inaccurate information
11 submitted by the eligible company or partnership in a previous report, the reimbursable amount
12 identified in the written directive shall be adjusted to deduct those actions directed based upon
13 omissions, misrepresentations, or otherwise inaccurate information submitted.

14 (h) If the Underground Storage Tank Branch rescinds a written directive issued, prior to
15 the completion of the entire scope of work identified in the written directive, the previously
16 approved reimbursement amount shall be adjusted to reflect the cost of actions completed, with
17 reference to the Contractor Cost Outline and the cost estimate submitted, if applicable.

18 (7) Reimbursement for an individual corrective action equipment purchase or rental shall
19 not include markup and shall be limited to:

20 (a) The original purchase price[, ~~less the anticipated salvage value~~] provided by the
21 supplier or manufacturer, including applicable sales tax, if purchased; or

22 (b) Rental costs not exceeding the purchase price[, ~~less the anticipated salvage value~~]
23 provided by the supplier or manufacturer, if rented.

1 (8) Costs incurred prior to issuance of a written directive by the Underground Storage
2 Tank Branch in accordance with this section shall be ineligible for reimbursement.

3 Section 8. Reimbursement Procedures for a Written Directive issued by the Underground
4 Storage Tank Branch. (1) Reimbursement for a written directive shall be made after the
5 following actions are completed:

6 (a) The submittal and approval of an Application for Assistance, DEP 6063, in
7 accordance with Section 2 of this administrative regulation;

8 (b) The USTB Written Directive Claim Request Form, DEP 6091, which was provided
9 with the written directive has been completed, signed and submitted to the Underground Storage
10 Tank Branch, and;

11 (c) The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-
12 140(18);

13 (d) The Payment Waiver Form, DEP 6077, executed by each affected vendor or
14 subcontractor, as applicable, in accordance with KRS 224.60-140(18);

15 (e) The submittal of weigh tickets and invoices documenting the actual cost of utilities or
16 other required backup documentation as indicated in the written directive;

17 (f) The technical report submitted in response to the written directive is determined by the
18 Underground Storage Tank Branch to be technically complete in relation to the written directive
19 and 401 KAR Chapter 42; and

20 (g) Payment has been received for all applicable annual registration fees in accordance
21 with KRS 224.60-150 and 401 KAR 42:200;

1 (2) Reimbursement shall be contingent upon the contracted eligible company or
2 partnership meeting and maintaining the requirements established in accordance with 401 KAR
3 42:316;

4 (3) Reimbursement shall be contingent upon a certified laboratory performing the
5 required analysis in accordance with 401 KAR 42:340;

6 (4) If the contract with the eligible company or partnership designated on a written
7 directive is terminated prior to the commencement of reimbursable activities in response to the
8 written directive, the obligation and guarantee of payment of the reimbursable amount, made in
9 accordance with KRS 224.60-140(5), shall be null and void;

10 (5) The information completed by the Underground Storage Tank Branch on the USTB
11 Written Directive Claim Request Form, DEP 6091, attached to the written directive, shall not be
12 modified by the applicant or the eligible company or partnership designated on the written
13 directive;

14 (6) The Underground Storage Tank Branch shall issue a determination pursuant to KRS
15 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

16 (7) All claims shall be submitted within two (2) years after issuance of a no further action
17 letter by the Underground Storage Tank Branch.

18 (8) If a request to re-evaluate the reimbursable amount, established in accordance with
19 Section 7 of this administrative regulation, is submitted in accordance with Section 14, and a
20 determination is made by the Underground Storage Tank Branch that the establishment of a not-
21 to-exceed amount is warranted, final reimbursement shall be made on a time and material basis,
22 which shall require the following supporting documentation:

1 (a) An itemization of the eligible company or partnership invoice with supporting
2 documentation;

3 (b) Itemized subcontractor and vendor invoices with supporting documentation; and

4 (c) Time sheets to support all personnel time billed for the completion of the scope of
5 work identified in the written directive.

6 Section 9. Reimbursement Procedures for Reimbursable Actions that are not Directed in
7 Writing by the Underground Storage Tank Branch.(1) Reimbursement shall be made for the
8 following actions, which do not require written directives from the Underground Storage Tank
9 Branch or cost estimates from the applicant and eligible company or partnership, in accordance
10 with the applicable formulated task rates established in the Contractor Cost Outline;

11 (a) Optional Soil Removal Outside the Excavation Zone at the time of permanent closure,
12 in accordance with Section 6 of the Closure Outline incorporated by reference in 401 KAR
13 42:070;

14 (b) Transportation and disposal, treatment, or recycling of contaminated material or water
15 at a permitted facility, from within the excavation zone, contaminated above applicable
16 screening[allowable] levels, at the time of permanent closure, in accordance with the Closure
17 Outline incorporated by reference in 401 KAR 42:070;

18 (c) Initial response actions, identified in Section 2.14 of the Contractor Cost Outline,
19 taken at a facility, in accordance with Section 2 of the Release Response and Initial Abatement
20 Requirements Outline, incorporated by reference in 401 KAR 42:060, prior to a written directive
21 from the Underground Storage Tank Branch or prior to the date of a declared environmental
22 emergency by the cabinet;

1 (d) Transportation and disposal of drums containing purged water or soil cuttings
2 associated with actions directed in accordance with 401 KAR 42:060;

3 (e) Encroachment permit renewals necessary to complete directed actions; and

4 (f) Unscheduled maintenance of a remediation system installed in accordance with an
5 approved Corrective Action Plan, in accordance with Section 2.13 of the Contractor Cost
6 Outline, and invoices supporting the cost of necessary materials or equipment not exceeding a
7 total cost of \$3,000.00, but shall not include unscheduled maintenance equipment costs covered
8 by equipment warranty. Material or equipment costs associated with unscheduled maintenance
9 of a remediation system exceeding \$3,000.00 shall require pre-approval before work is
10 performed.

11 (2) Reimbursement shall be made after the following actions are completed:

12 (a) The submittal and approval of an Application for Assistance, DEP 6063, in
13 accordance with Section 2 of this administrative regulation;

14 (b) The Claim Request Form For Actions Not Directed By The USTB, DEP 6064, has
15 been completed, signed and submitted to the Underground Storage Tank Branch;

16 (c) The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-
17 140(18);

18 (d) The Payment Waiver Form, DEP 6077, executed by each affected vendor or
19 subcontractor, as applicable, in accordance with KRS 224.60-140(18); and

20 (e) The submittal of required backup documentation as identified on the instruction sheet
21 associated with each worksheet;

22 (f) Payment has been received for all applicable annual registration fees in accordance
23 with KRS 224.60-10 and 401 KAR 42:200;

1 (g) The Optional Soil Removal Worksheet, DEP 6094, has been completed and submitted
2 to the Underground Storage Tank Branch for optional soil removal outside of the excavation
3 zone at the time of permanent closure in accordance with 401 KAR 42:070 for actions listed in
4 subsection (1)(a) of this section, if performed;

5 (h) The Miscellaneous Tasks Worksheet, DEP 6093, has been completed and submitted
6 to the Underground Storage Tank branch for actions listed in subsection (1)(b), (c), (d), (e) or (f)
7 of this section, if performed; and

8 (i) The technical report submitted for (a), (b) or (c) of subsection (1) of this section is
9 determined by the Underground Storage Tank Branch to be technically complete, if applicable,
10 in accordance with 401 KAR Chapter 42.

11 (3) Reimbursement shall be contingent upon the contracted eligible company or
12 partnership meeting and maintaining the requirements established in accordance with 401 KAR
13 42:316;

14 (4) Reimbursement shall be contingent upon a certified laboratory performing the
15 required analysis in accordance with 401 KAR 42:340;

16 (5) The Underground Storage Tank Branch may require additional information and
17 documentation to determine that an eligible request for reimbursement is necessary and
18 reasonable.

19 (6) If the applicant fails to correct a claim-related deficiency or to supply additional claim
20 information within thirty (30) days of written notice from the Underground Storage Tank
21 Branch, that portion of the claim shall be denied.

22 (7) The Underground Storage Tank Branch shall issue a determination pursuant to KRS
23 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

1 (8) All claims shall be submitted within two (2) years after issuance of a no further action
2 letter by the Underground Storage Tank Branch.

3 Section 10. Reimbursement Procedures for Facility Restoration. (1) An itemized cost
4 estimate shall be submitted to the Underground Storage Tank Branch on the Facility Restoration
5 Worksheet, DEP 6095, for the completion of facility restoration actions;

6 (2) Written approval, by the Underground Storage Tank Branch, of the cost estimate shall
7 constitute, subject to adjustment in accordance with subsection (4) of this section, an obligation
8 and guarantee of payment, in accordance with KRS 224.60-140(5), for the cost of actions that are
9 completed in full.

10 (3) Costs incurred prior to the written approval of the cost estimate by the Underground
11 Storage Tank Branch shall be ineligible for reimbursement.

12 (4) Upon the completion of site restoration actions, final reimbursement shall be based on
13 the costs identified through the submittal of the Facility Restoration Worksheet, DEP 6095, that
14 identified the actual work completed.

15 (5) Reimbursement for facility restoration actions involving the replacement of surface
16 material shall be limited to costs necessary for the replacement of surface material removed
17 during corrective action activities.

18 (6) Reimbursement for site restoration activities shall be made after the following actions
19 are completed:

20 (a) The submittal and approval of an Application for Assistance, DEP 6063, in
21 accordance with Section 2 of this administrative regulation;

22 (b) The Claim Request Form For Actions Not Directed by the USTB, DEP 6064, has
23 been completed, signed and submitted to the Underground Storage Tank Branch;

1 (c) The Payment Verification Affidavit Form, DEP 6075, as required by KRS 224.60-
2 140(18);

3 (d) The Payment Waiver Form, DEP 6077, executed by each affected vendor or
4 subcontractor, as applicable, in accordance with KRS 224.60-140(18);

5 (e) The Facility Restoration Worksheet, DEP 6095, has been completed, and submitted,
6 with the required documentation, to the Underground Storage Tank Branch; and

7 (f) Payment has been received for all applicable annual registration fees in accordance
8 with KRS 224.60-150 and 401 KAR 42:200.

9 (7) Reimbursement shall be contingent upon the contracted eligible company or
10 partnership meeting and maintaining the requirements of 401 KAR 42:316.

11 (8) The Underground Storage Tank Branch may require additional information and
12 documentation to determine that an eligible request for reimbursement is necessary and
13 reasonable.

14 (9) If the applicant fails to correct a claim-related deficiency or to supply additional claim
15 information within thirty (30) days of written notice from the Underground Storage Tank
16 Branch, that portion of the claim shall be denied.

17 (10) The Underground Storage Tank Branch shall issue a determination pursuant to KRS
18 224.60-140(7) as to whether the costs submitted in the claim are eligible for reimbursement.

19 (11) All claims shall be submitted within two (2) years after issuance of a no further
20 action letter by the Underground Storage Tank Branch.

21 Section 11. Reimbursement for Actions Directed and Documented by the Environmental
22 Response Branch during a Declared Environmental Emergency. Reimbursement for actions
23 directed and documented by the Environmental Response Branch during a declared

environmental emergency shall not be governed by this administrative regulation and shall be made in accordance with procedures established by the cabinet.

Section 12. Eligible and Ineligible Costs. (1) Eligible costs for regulated petroleum storage tanks containing motor fuel shall include:

(a) Tank and Line Tightness Testing as requested in writing by the Underground Storage Tank Branch in conjunction with Site Check, Site Investigation, or Corrective Action activities for a facility;

(b) Site checks at a facility, upon a written directive after September 13, 2006, by the Underground Storage Tank Branch;

(c) Performance of corrective action as defined in KRS 224.60-115(4), due to a release of motor fuel from a regulated petroleum storage tank system, upon written direction by the Underground Storage Tank Branch;

(d) Transportation, disposal, or treatment at a permitted facility, and replacement of backfill material, excluding the tank volume, contaminated above **applicable screening**[allowable] levels within the excavation zone;

(e) Transportation and disposal, treatment, or recycling, at a permitted facility, of free product or water contaminated above screening levels encountered within the excavation zone, during permanent closure activities in accordance with 401 KAR 42:070, or as directed in writing by the Underground Storage Tank Branch for those facilities currently performing corrective action activities in accordance with 401 KAR 42:060;

(f) The cost of surface material replacement for excavated areas directly associated with corrective action activities;

1 (g) Initial response actions taken outside of the excavation zone, in accordance with
2 Section 2 of the Release Response and Initial Abatement Requirements Outline, incorporated by
3 reference in 401 KAR 42:060, prior to a written directive from the Underground Storage Tank
4 Branch or prior to the date of a declared emergency by the cabinet; and

5 (h) Other costs, associated with corrective action activities, as identified in a written
6 directive issued by the Underground Storage Tank branch for the facility.

7 (2) Ineligible costs for regulated petroleum storage tanks containing motor fuel shall
8 include:

9 (a) Replacement, repair, maintenance, or retrofitting of tanks or piping;

10 (b) Out-of-state travel expense, including air fare;

11 (c) Loss of business, income or profits;

12 (d) An attorney fee related to:

13 1. Judicial or administrative litigation;

14 2. Consultation on administrative regulations;

15 3. Preparation or submittal of documentation related to reimbursement process; or

16 4. Other legal services determined by the Underground Storage Tank Branch not to be
17 integral to the performance of corrective action.

18 (e) Decreased property values for the facility;

19 (f) Facility improvements, including costs to upgrade the facility;

20 (g) An aesthetic improvement to the facility;

21 (h) The cost of surface material replacement for areas not removed as part of corrective
22 action;

1 (i) Payment of the owner or operator's personnel for overtime, or for staff time in
2 planning or implementing corrective action as defined in KRS 224.60-115(4);

3 (j) Interest on an overdue account or loan;

4 (k) A cost covered by insurance payable to the owner or operator;

5 (l) A contractor surcharge implemented because the owner or operator failed to act in a
6 timely fashion;

7 (m) Work performed that is not in compliance with safety codes;

8 (n) A cost associated with a release from a storage tank exempt from KRS 224.60;

9 (o) Contractor markup expense for a normally expected overhead item or in-stock
10 material;

11 (p) Contractor markup expense for personnel cost;

12 (q) A laboratory "rush" fee, unless directed by the Underground Storage Tank Branch;

13 (r) A cost or cost recovery for governmental emergency services;

14 (s) Corrective action activities subsequent to the issuance of a no further action letter,
15 unless otherwise directed in writing by the Underground Storage Tank Branch;

16 (t) Reimbursement shall not be made for work or a portion of work performed at a facility
17 where the results of laboratory analysis do not confirm the need for corrective action or for
18 actions to achieve more stringent allowable levels than those prescribed by the cabinet, except
19 for investigatory or corrective actions otherwise directed from the Underground Storage Tank
20 Branch in writing;

21 (u) A cost of a party employed to act as a surrogate or stand-in for the owner or operator
22 of the facility;

1 (v) Preparation of documentation, cost estimates, written agreements, contracts or client
2 invoices that will be submitted to the Underground Storage Tank Branch for reimbursement
3 purposes;

4 (w) Except as provided in 401 KAR 42:330, cost related to the removal, or actions
5 incidental to the removal of a tank system;

6 (x) Cost of resampling and laboratory tests performed as a result of an operational or
7 methodology mistake by the analytical laboratory, or cost for an analytical laboratory to become
8 certified or accredited under the requirements of KRS 224.60-130(1)(a) and 401 KAR 42:340;

9 (y) Costs relating to compliance with a local program having corrective action standards
10 more stringent than those required by the cabinet;

11 (z) Costs to achieve corrective action standards more stringent than those required by the
12 applicable administrative regulation, as determined in 401 KAR 42:070;

13 (a)(a) Actions resulting from contractor error or negligence;

14 (b)(b) Costs covered by the contractor's liability insurance;

15 (c)(c) Other services or costs determined by the Underground Storage Tank Branch to be
16 an unreasonable or unnecessary cost of corrective action;

17 (d)(d) Overtime for individual personnel exceeding 40 hours during a standard
18 workweek;

19 (e)(e) Free product recovery from monitoring wells or borings during corrective action
20 activities, unless directed in writing by the Underground Storage Tank Branch;

21 (f)(f) Costs incurred for additional assessment or Corrective Action Plan modification
22 determined to be necessary by the Underground Storage Tank Branch as a result of delayed

1 implementation of the Corrective Action Plan, beyond the deadline established in writing by the
2 Underground Storage Tank Branch;

3 (g)(g) Costs incurred for the purpose of compliance with permit conditions for permitted
4 soil treatment facilities;

5 (h)(h) The portion of the lease or rental cost for capital equipment which would exceed
6 the purchase price of the equipment, minus the salvage value;

7 (i)(i) Costs incurred for the removal, transportation and disposal, recycling, or treatment
8 of free product from within the excavation zone of a UST system, that is not permanently closed,
9 for which contamination above **applicable screening**[allowable] levels outside the excavation
10 zone has not been confirmed;

11 (j)(j) Costs incurred for the purpose of meeting the requirements of 401 KAR 42:020,
12 42:030, and 42:040;

13 (k)(k) Equipment replacements costs covered by equipment warranty;

14 (l)(l) Costs incurred to replace a monitoring well destroyed, damaged or that cannot be
15 accessed or located due to actions within the control of the applicant; and

16 (m)(m) An eligible company or partnership that employs a subcontractor, a subsidiary
17 company, or other vendor, that is affiliated with the eligible company or partnership or a
18 principle of the eligible company or partnerships shall not receive the fifteen (15) percent mark
19 up for the cost of corrective action.

20 Section 13. Reimbursement Rates. (1) Established rates for eligible reimbursement are
21 identified in the Contractor Cost Outline.

22 (2) Costs not included in the Contractor Cost Outline shall be reasonable and necessary to
23 the performance of corrective action in order to be eligible for reimbursement.

1 (3) Pass-through costs for utilities and employee expense accounts shall not receive a
2 markup on the actual cost.

3 (4) A fifteen (15) percent total markup above the estimated cost of materials purchased
4 associated with a task for which there is not a formulated unit rate shall be allowed.

5 Section 14. Request for Re-Evaluation of the Reimbursable Amount Identified in a
6 Written Directive. (1) If the applicant determines that the scope of work identified in a written
7 directive cannot be completed without exceeding the total reimbursable amount set forth in the
8 written directive, a request for re-evaluation of the reimbursable amount may be submitted to the
9 Underground Storage Tank Branch on the Reimbursable Amount Re-Evaluation Form, DEP
10 0062, and shall include:

11 (a) The submittal of three (3) current written estimates, for services or materials not
12 provided by the contracting company or partnership, from subcontractors in the area in which the
13 facility is located, if applicable;

14 (b) The submittal of an itemized cost breakdown of the contracting company or
15 partnership's time and materials in completing the written directive; and

16 (c) The costs shall be calculated using the personnel and equipment rates established in
17 Section 3 of the Contractor Cost Outline.

18 (2) The Underground Storage Tank Branch shall review the itemized cost breakdown and
19 based upon a determination of reasonable and necessary costs, the Underground Storage Tank
20 Branch shall either:

21 (a) Determine that the itemized cost breakdown exceeds the reimbursable amount,
22 rescind the written directive, and issue a new written directive establishing a not-to-exceed
23 amount; or

1 (b) Determine that the reasonable and necessary costs itemized are at or below the initial
2 reimbursement amount, and deny the request for re-evaluation, leaving the reimbursable amount
3 identified in the original directive letter in effect.

4 (3) Upon a determination by the Underground Storage Tank Branch that the
5 establishment of a not-to-exceed amount is warranted in accordance with subsection (2)(a) of
6 this section, final reimbursement shall be determined on an actual time and materials basis, and
7 the appropriate supporting documentation shall be submitted to the Underground Storage Tank
8 Branch, in accordance with Section 8(8) of this administrative regulation, as an attachment to the
9 claim.

10 Section 15. Signatures. (1) Forms required by this administrative regulation for which a
11 signature is required shall be signed by an eligible petroleum storage tank owner or operator as
12 follows:

13 (a) For a corporation, by:

14 1. A president or secretary;

15 2. The duly authorized representative or agent of the president or secretary if the
16 representative or agent is responsible for overall operation of the facility; or

17 3. A person designated by the board of directors by means of a corporate resolution.

18 (b) For a partnership, sole proprietorship or individual, by a general partner, the
19 proprietor or individual respectively; or

20 (c) For a municipality, by:

21 1. A principal;

22 2. Executive officer; or

23 3. Ranking elected official.

1 (d) A person designated by a court to act on behalf of the eligible petroleum storage tank
2 owner or operator.

3 (2) A claim form or Application for Assistance shall also be signed by:

4 (a) The professional engineer or professional geologist who is responsible for overseeing
5 corrective action; and

6 (b) An authorized representative of the eligible company or partnership, unless corrective
7 action commenced prior to July 1, 1999.

8 (3) The owner or operator shall submit documentary evidence to substantiate the legality
9 of an authorized representative's power of agency or power of attorney.

10 Section 16. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank
11 owner or operator shall be ineligible to receive future reimbursement from the Financial
12 Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner
13 or operator has:

14 (a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or

15 (b) Knowingly made a false statement, representation, or certification in an application,
16 reimbursement request, or other document submitted to the cabinet.

17 (2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate
18 information, or a false statement, representation, or certification shall be recovered by the cabinet
19 from the person who asserted the false or inaccurate information, or false statement,
20 representation, or certification.

21 (3) The cabinet shall have the right to recover the money paid to a petroleum storage tank
22 owner or operator, or a contractor if:

1 (a) The amount was paid due to an error of the cabinet in processing a claim for
2 reimbursement;

3 (b) The amount was paid due to a mistake, error, or inaccurate information in the claim
4 submitted by the petroleum storage tank owner or operator or in an invoice submitted by a
5 contractor; or

6 (c) A person has obtained reimbursement from the cabinet by fraud or intentional
7 misrepresentation.

8 Section 17. Subrogation. Prior to making reimbursement of a claim, the cabinet shall
9 require, by subrogation, the rights of the person seeking reimbursement or recover the amounts
10 paid by the cabinet for the performance of corrective action from the person responsible or liable
11 for the release.

12 Section 18. Facility Inspections: The cabinet may conduct inspections in accordance
13 with KRS 224.60-130(1)(I) to determine the reasonableness and necessity of the costs of
14 corrective action.

15 (1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement
16 for the costs of corrective action.

17 (2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the
18 owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage
19 tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.

20 (3)(a) The cabinet shall be present at the facility during all petroleum storage tank
21 permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;

22 (b) A petroleum storage tank owner or operator shall contact the appropriate Field
23 Operations Branch regional office, by certified mail, to schedule a date to have an inspector

1 present at the facility during petroleum storage tank permanent closure activities. The certified
2 mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement
3 of the permanent closure;

4 (c) If the inspector cannot be present at the facility on the day scheduled by the notice
5 sent as required in paragraph (b) of this subsection, he may, by written notice, require the
6 petroleum storage tank owner or operator to reschedule the permanent closure to a proposed
7 date. This notice shall be mailed by the cabinet no later than ten (10) days prior to the date
8 scheduled by the petroleum storage tank owner or operator.

9 (d) If the inspector fails to issue notice to reschedule the permanent closure, or is not
10 present on the day set by the notice, the permanent closure may proceed without penalty; and

11 (e) This provision shall not apply to an emergency removal ordered by the cabinet.

12 (4)(a) A petroleum storage tank owner or operator shall:

13 1. Provide an inspector full access to an area or well for the collection of samples;

14 2. Split samples obtained at the facility with the cabinet, if required by the inspector;

15 3. Resample an area or well for which the result of analytical testing obtained by the
16 cabinet differs significantly from the result obtained by the petroleum storage tank owner or
17 operator; and

18 4. Have the burden of proving the validity of analytical results, if a discrepancy remains
19 after resampling.

20 (b) The cabinet shall not reimburse the costs of resampling if the Underground Storage
21 Tank Branch determines that proper sampling, sample handling or analytical protocols were not
22 adhered to by the contractor or certified laboratory.

1 (c) Failure to allow sample collection, or to split samples with the cabinet, shall render
2 the owner or operator ineligible for reimbursement.

3 Section 19. Account Balance. (1) The unobligated balance of the Financial
4 Responsibility Account shall not be less than \$1,000,000, so as to ensure a reserve balance
5 adequate to meet federal financial responsibility requirements for participants in the account.

6 (2) If the unobligated balance of the Financial Responsibility Account is \$1,000,000 or
7 less, or the reimbursement of additional claims would cause the unobligated balance of the fund
8 to be less than \$1,000,000, the cabinet shall immediately suspend claim reimbursements and the
9 approval of applications until the unobligated balance is greater than \$1,000,000. When the
10 suspension is lifted, the priority of reimbursement for claims submitted related to an approved
11 application for assistance shall be determined by the date of the claim submittal.

12 Section 20. Incorporation by Reference. (1) The following material is incorporated by
13 reference:

14 (a) "Application for Assistance", DEP 6063, (April 2011);

15 (b) "Affidavit of Termination of Contract", DEP 0061, (April 2011);

16 (c) "Reimbursable Amount Re-Evaluation", DEP 0062, (April 2011);

17 (d) "Claim Request for Actions Not Directed by the USTB", DEP 6064, (April 2011);

18 (e) "Miscellaneous Task Reimbursement Worksheet", DEP 6093, (July[April] 2011);

19 (f) "Facility Restoration Reimbursement Worksheet", DEP 6095, (April 2011);

20 (g) "Optional Soil Removal Outside the Excavation Zone Reimbursement Worksheet",
21 DEP 6094, (April 2011);

22 (h) "Payment Verification Affidavit", DEP 6075, (April 2011);

23 (i) "Payment Waiver", DEP 6077, (April 2011);

1 (j) "Cost Estimate", DEP 6090, (July[April] 2011);

2 (k) "Underground Storage Tank Branch Written Directive Claim Request", DEP 6091,
3 (April 2011); and

4 (l) "Contractor Cost Outline, (July[April] 2011).

5 (2)(a) This material may be inspected, copied, or obtained, subject to applicable
6 copyright law, at the Division of Waste Management, 200 Fair Oaks Lane, Second Floor,
7 Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

8 (b) This material may also be obtained at the Division of Waste Management's Web site
9 at <http://waste.ky.gov/ust>.

10 ~~[Section 1. Applicability. This administrative regulation establishes the eligibility~~
11 ~~requirements and procedures for an eligible petroleum storage tank owner or operator to make~~
12 ~~application and receive reimbursement from the cabinet to pay the cost of corrective action due~~
13 ~~to a release from a petroleum storage tank. Federal and state-owned facilities shall not be eligible~~
14 ~~for reimbursement from the PSTEAF.~~

15 ~~Section 2. Application for Assistance. (1) Within thirty (30) calendar days of a confirmed~~
16 ~~release, a petroleum storage tank owner or operator who has received a Certificate of~~
17 ~~Registration and Reimbursement Eligibility, pursuant to and incorporated by reference in 401~~
18 ~~KAR 42:020, or a Certificate of Eligibility, issued prior to the effective date of this~~
19 ~~administrative regulation, which indicates that the owner or operator is eligible to participate in~~
20 ~~the Financial Responsibility Account or the Petroleum Storage Tank Account, shall complete~~
21 ~~and submit to the cabinet an "Application for Assistance", DEP 6063 (August 2006) as~~
22 ~~incorporated by reference in Section 26 of this administrative regulation.~~

1 ~~(2) An owner or operator who has not submitted an Application for Assistance for a~~
2 ~~confirmed release prior to the effective date of this administrative regulation shall submit a~~
3 ~~completed Application for Assistance in order to be eligible for reimbursement.~~

4 ~~(3) The eligible petroleum storage tank owner or operator shall certify in the Application~~
5 ~~for Assistance that:~~

6 ~~(a) A release requiring corrective action from an eligible facility has occurred and has~~
7 ~~been reported to the cabinet; and~~

8 ~~(b) A contract has been entered into and submitted in accordance with Section 3 of this~~
9 ~~administrative regulation.~~

10 ~~(4) A written notice, in accordance with 401 KAR 42:070, shall be submitted to the~~
11 ~~applicable regional office at least fourteen (14) calendar days prior to commencement of the~~
12 ~~permanent closure of the petroleum storage tank to maintain eligibility for reimbursement.~~

13 ~~(5) The cabinet shall identify in writing deficiencies in a submitted Application for~~
14 ~~Assistance. Failure by the applicant to provide the requested information and documentation~~
15 ~~within thirty (30) days of receipt of the request shall cause the application to be denied. A request~~
16 ~~for an extension of time in which to submit the requested information shall be submitted in~~
17 ~~writing to the cabinet prior to the deadline. Denial of the Application for Assistance shall not~~
18 ~~prevent the petroleum storage tank owner or operator from reapplying if the requested~~
19 ~~documentation becomes available.~~

20 ~~(6) If the petroleum storage tank owner or operator meets the requirements of subsections~~
21 ~~(2) and (3) of this section, the cabinet shall:~~

22 ~~(a) Approve the Application for Assistance;~~

1 ~~(b) Reevaluate the eligibility of the owner or operator to receive reimbursement from~~
2 ~~either the Financial Responsibility Account or the Petroleum Storage Tank Account according to~~
3 ~~Section 4 of this administrative regulation; and~~

4 ~~(c) If the evaluation results in changing the owner's or operator's account placement from~~
5 ~~the initial placement made prior to the submittal of the Application for Assistance, the cabinet~~
6 ~~shall issue an amended "Certificate of Registration and Reimbursement Eligibility", DEP 7113~~
7 ~~(January 2006), incorporated by reference in 401 KAR 42:020.~~

8 ~~Section 3. Contracts. (1) A petroleum storage tank owner or operator shall obtain a~~
9 ~~contract from a certified company, if work was initiated on or after July 1, 1999, to be eligible~~
10 ~~for reimbursement from the cabinet for:~~

11 ~~(a) The performance of release investigation, site check or site investigation for a facility;~~
12 ~~and~~

13 ~~(b) The development and implementation of a corrective action agreement in accordance~~
14 ~~with Section 17 of this administrative regulation.~~

15 ~~(2) The contract shall be obtained and submitted to the cabinet prior to commencing~~
16 ~~activity, except for those actions directed and documented by the cabinet's Environmental~~
17 ~~Response Team upon the cabinet's declaration of an environmental emergency.~~

18 ~~(3) If a contract is changed or revised, a copy of that contract shall be submitted to the~~
19 ~~cabinet within thirty (30) days of execution.~~

20 ~~Section 4. Account Placement. (1) An owner or operator of a petroleum storage tank shall~~
21 ~~be eligible to receive reimbursement for corrective action costs and third party claims, incurred~~
22 ~~on or after April 9, 1990, from the Financial Responsibility Account if the cabinet determines the~~
23 ~~petroleum storage tank owner or operator to have satisfied the following requirements:~~

1 ~~(a) Registered the tanks with the cabinet in accordance with 401 KAR 42:020 prior to the~~
2 ~~release requiring corrective action;~~

3 ~~(b) Maintained UST system release detection as required by 401 KAR 42:040. A~~
4 ~~petroleum storage tank permanently or temporarily closed, in compliance with 401 KAR 42:070,~~
5 ~~shall have maintained compliance with UST system release detection requirements prior to the~~
6 ~~permanent or temporary closure of the system;~~

7 ~~(c) Maintained corrosion protection as required by 401 KAR 42:030;~~

8 ~~(d) Maintained overfill and spill prevention as required by 401 KAR 42:030 for those~~
9 ~~tanks in operation after December 22, 1998;~~

10 ~~(e) Received a "Certificate of Registration and Reimbursement Eligibility", DEP 7113~~
11 ~~(January 2006) for the facility, pursuant to 401 KAR 42:020, or a Certificate of Eligibility issued~~
12 ~~prior to the effective date of this administrative regulation;~~

13 ~~(f) Filed a notice of intent form, incorporated by reference in 401 KAR 42:070, if~~
14 ~~applicable, with the cabinet to permanently close the petroleum storage tanks at the facility or to~~
15 ~~make a change in service to comply with the requirements of 401 KAR 42:070;~~

16 ~~(g) Reported the release to the cabinet immediately after the discovery of the release as~~
17 ~~required by KRS 224.01-400 and 401 KAR 42:050;~~

18 ~~(h) Performed initial abatement procedures as required by the "UST System Release~~
19 ~~Response and Initial Abatement Requirements Outline" (August 2006), incorporated by~~
20 ~~reference in 401 KAR 42:060; and~~

21 ~~(i) With regard to reimbursement for third party claims, has complied with the~~
22 ~~requirements of 401 KAR 42:300.~~

1 ~~(2) An owner or operator of a petroleum storage tank who is not eligible for participation~~
2 ~~in the Financial Responsibility Account, shall be eligible for reimbursement by the Petroleum~~
3 ~~Storage Tank Account for the cost of corrective action incurred on or after April 9, 1990, if the~~
4 ~~cabinet determines the petroleum storage tank owner or operator has satisfied the following~~
5 ~~requirements:~~

6 ~~(a) Registered the facility with the cabinet in accordance with 401 KAR 42:020;~~

7 ~~(b) Filed a notice of intent form with the cabinet to permanently close the petroleum~~
8 ~~storage tanks at the facility (if applicable) or to make a change in service (if applicable) to~~
9 ~~comply with the requirement of 401 KAR 42:070; and~~

10 ~~(c) Reported a release to the cabinet as required by KRS 224.01-400 and KRS 224.01-~~
11 ~~405.~~

12 ~~(3) Facilities placed in the Petroleum Storage Tank Account shall not be eligible for~~
13 ~~third-party coverage.~~

14 ~~Section 5. Entry Level to the Financial Responsibility Account and Petroleum Storage~~
15 ~~Tank Account. (1) For facilities with releases confirmed after the effective date of this~~
16 ~~administrative regulation, a petroleum storage tank owner's or operator's entry level shall be~~
17 ~~deducted from the overall reimbursement except as provided in subsections (2) and (3) of this~~
18 ~~section.~~

19 ~~(2) An entry level shall not be deducted from the overall reimbursement if the owner or~~
20 ~~operator participated in the Small Owner Tank Removal Account in accordance with 401 KAR~~
21 ~~42:330.~~

22 ~~(3) The entry level shall not be deducted from the overall reimbursement if the owner or~~
23 ~~operator is directed by the cabinet to perform a site check, in accordance with 401 KAR 42:060,~~

1 ~~for the facility and the laboratory analyses indicate corrective action is not required at the~~
2 ~~facility.~~

3 ~~(4) Upon request by the petroleum storage tank owner or operator, the cabinet shall~~
4 ~~reimburse, upon final payment, twenty five (25) percent of the entry level if the petroleum~~
5 ~~storage tank owner or operator has:~~

6 ~~(a) Completed corrective action at the facility within:~~

7 ~~1. 180 days from the discovery of the release, for soil remediation alone; or~~

8 ~~2. Twenty four (24) months from the discovery of the release, for groundwater alone or~~
9 ~~for both soil and groundwater remediation; and~~

10 ~~(b) Received a no further action letter without additional measures being required.~~

11 ~~Section 6. Newly Discovered Underground Storage Tank System. (1) A newly~~
12 ~~discovered underground storage tank system encountered at a facility during the performance of~~
13 ~~corrective action due to a release from a registered tank shall not affect an owner's or operator's~~
14 ~~account placement eligibility.~~

15 ~~(2) The number of newly discovered tanks shall not increase the entry level of the owner~~
16 ~~or operator.~~

17 ~~Section 7. Preestablished Fixed Cost Reimbursement. (1) All reimbursements shall be~~
18 ~~made on the basis of preestablished fixed costs as established in the "Contractor Cost Outline"~~
19 ~~(August 2006), except as provided for in Section 8 through Section 19 of this administrative~~
20 ~~regulation and 401 KAR 42:330.~~

21 ~~(2)(a) The preestablished fixed cost shall be identified within a written directive issued by~~
22 ~~the cabinet pursuant to 401 KAR 42:060 and shall be:~~

1 ~~1. Itemized by the cabinet on the appropriate reimbursement cost worksheets attached to~~
2 ~~the written directive as identified below:~~

3 ~~a. "Initial and Intermediate Site Investigation and Site Check for a Facility" worksheet,~~
4 ~~DEP 6066C, (August 2006) of this administrative regulation; and~~

5 ~~b. "Final Site Investigation for a Facility" worksheet, DEP 6066D, (August 2006); and~~

6 ~~2. Considered the final cost for the completion of the written directive and shall serve as~~
7 ~~an obligation and guarantee of payment in accordance with KRS 224.60-140(5).~~

8 ~~(b) Fixed cost reimbursement shall be made after the following actions are completed:~~

9 ~~1. The submittal and approval of an Application for Assistance in accordance with~~
10 ~~Section 2 of this administrative regulation;~~

11 ~~2. A determination by the cabinet that the report submitted in response to each written~~
12 ~~directive is complete and meets the requirements of 401 KAR Chapter 42;~~

13 ~~3. The submittal of necessary documentation pursuant to the "Contractor Cost Outline",~~
14 ~~(August 2006) of this administrative regulation; and~~

15 ~~4. The submittal of signed worksheets provided with the written directive from the~~
16 ~~cabinet.~~

17 ~~(3) The initial fixed cost for over excavation shall be identified on the "Over Excavation"~~
18 ~~worksheet, DEP 6066E, (August 2006). An estimate of the tonnage removed shall be based on~~
19 ~~the volume and density of material in the proposed excavation area. The cabinet shall convert~~
20 ~~cubic yards to tons using a density of 1.5 tons per cubic yard. Actual reimbursement shall be~~
21 ~~based on:~~

22 ~~(a) A submittal of weigh tickets; or~~

1 ~~(b) The actual area of over excavation, not to exceed the initial estimate as identified on~~
2 ~~the "Over Excavation" worksheet, DEP 6066E, (August 2006).~~

3 ~~(4) Preestablished fixed costs identified by the cabinet for corrective action agreements~~
4 ~~shall be determined based on the negotiated agreement between the cabinet and petroleum~~
5 ~~storage tank owner or operator.~~

6 ~~Section 8. General Requirements for the Submittal of Claims for which there is no~~
7 ~~Preestablished Fixed Cost. (1) Any eligible costs for which a directive was issued prior to the~~
8 ~~effective date of this administrative regulation shall be submitted on the forms in effect at the~~
9 ~~time the directive was issued.~~

10 ~~(2) Cost estimates shall be submitted on the appropriate reimbursement cost worksheets,~~
11 ~~and approved by the cabinet, prior to incurring costs for actions not covered in Section 7 or~~
12 ~~Section 10 of this administrative regulation. The cabinet shall establish a reimbursable amount~~
13 ~~based on a cost estimate submitted by the contractor, which shall serve as an obligation and~~
14 ~~guarantee of payment in accordance with KRS 224.60-140(5).~~

15 ~~(3) The request for reimbursement associated with a written directive that does not~~
16 ~~include a preestablished fixed cost, issued by the cabinet after the effective date of this~~
17 ~~administrative regulation, shall be submitted on the appropriate reimbursement cost worksheet as~~
18 ~~an attachment to the required technical report.~~

19 ~~(4) The cabinet may require additional information and documentation to determine that~~
20 ~~an eligible request for reimbursement is necessary and reasonable. Actions necessary as a result~~
21 ~~of mistakes, omissions, or inefficiencies of the certified contractor occurring during the~~
22 ~~performance of corrective action, shall not be reimbursed.~~

1 ~~(5) The cabinet shall issue a determination pursuant to KRS 224.60-140(7) as to whether~~
2 ~~the costs submitted in the claim are eligible for reimbursement.~~

3 ~~(6) If the applicant fails to correct the deficiency or to supply the additional information~~
4 ~~required by the cabinet, that portion of the claim shall be denied.~~

5 ~~(7) All claims shall be submitted within two (2) years after issuance of a no further action~~
6 ~~letter by the cabinet.~~

7 ~~Section 9. Claim Submittal for Declared Emergency Actions. (1) Reimbursement for~~
8 ~~costs incurred to abate an environmental emergency shall be limited to those reasonable and~~
9 ~~necessary actions as directed and documented by the Environmental Response Team (ERT)~~
10 ~~under the terms of a declared emergency.~~

11 ~~(2) The claim request shall include the following documentation if the costs submitted~~
12 ~~were initiated after the effective date of this administrative regulation:~~

13 ~~(a) "Claim Request Form", DEP-6064 (January 2006);~~

14 ~~(b) "Invoice Listing Form", DEP-6065 (January 2006);~~

15 ~~(c) "Environmental Response Team Declared Emergency" worksheet, DEP-6066A~~
16 ~~(August 2006);~~

17 ~~(d) Original invoices as required in the "Contractor Cost Outline" (August 2006);~~

18 ~~(e) Documentation outlining the specific cabinet directives and dates from ERT; and~~

19 ~~(f) Documentation to establish that the petroleum storage tank owner or operator has~~
20 ~~complied with the administrative regulations or written directives from ERT.~~

21 ~~(3) Claims submitted shall be reviewed within thirty (30) days of receipt.~~

1 (4) Future reimbursement for actions subsequent to the close of the declared emergency
2 will be contingent upon written directives from the cabinet or entering into a corrective action
3 agreement.

4 Section 10. Third-party Claims. Third-party claims shall be submitted in accordance with
5 401 KAR 42:300 and shall include the "Third-party claim Form", DEP 6078, (January 2006).

6 Section 11. Capital Equipment. (1) A petroleum storage tank owner or operator who has
7 been directed by the cabinet to initiate corrective action that requires the purchase of equipment
8 costing in excess of \$1,000 shall obtain prior approval of the purchase by submitting a "Capital
9 Equipment Preapproval Purchase/Rental Request", DEP 6071, (January 2006) form.

10 (2) Reimbursement using the "Capital Equipment Claim Form", DEP 6070, (January
11 2006) shall be limited to the purchase price, less determined salvage value, as approved by the
12 cabinet.

13 (3) The cabinet shall approve either the purchase or rental of remediation equipment and
14 shall establish the amount to be reimbursed, in accordance with the "Contractor Cost Outline",
15 (August 2006).

16 Section 12. Claims for Initial Abatement-free Product Recovery. (1) Reimbursement
17 requests for costs incurred during initial abatement or free product recovery actions, as directed
18 by the cabinet, shall be submitted to the cabinet as a claim. The claim request shall include the
19 following documentation if the written directive is issued by the cabinet after the effective date
20 of this administrative regulation:

21 (a) "Claim Request Form", DEP 6064, (January 2006);

22 (b) "Invoice Listing Form", DEP 6065, (January 2006);

1 (c) ~~"Initial Abatement and Free Product Recovery" worksheet, DEP 6066B, (August~~
2 ~~2006); and~~

3 (d) ~~Original invoices as required in the "Contractor Cost Outline", (August 2006).~~

4 (2) ~~Reimbursements shall be contingent upon a determination by the cabinet that the~~
5 ~~submitted reports are accurate and complete, in accordance with 401 KAR 42:060.~~

6 ~~Section 13. Claims for Quarterly Monitoring Reports and System Maintenance.~~
7 ~~Reimbursement for costs incurred for quarterly monitoring, system maintenance, and reporting~~
8 ~~shall be limited to those actions specified in the approved and implemented corrective action~~
9 ~~plan.~~

10 (1) ~~If the work was initiated after the effective date of this administrative regulation,~~
11 ~~claim requests shall include the following documents:~~

12 (a) ~~"Claim Request Form", DEP 6064, (January 2006);~~

13 (b) ~~"Invoice Listing Form", DEP 6065, (January 2006);~~

14 (c) ~~"Quarterly Monitoring Reporting and System Maintenance" worksheet, DEP 6066G,~~
15 ~~(August 2006); and~~

16 (d) ~~Original invoices as required in the "Contractor Cost Outline", (August 2006).~~

17 (2) ~~Reimbursements shall be contingent upon a determination by the cabinet that the~~
18 ~~submitted reports are accurate and complete.~~

19 ~~Section 14. Claims for Optional Soil Removal Outside of the Excavation Zone at the~~
20 ~~Time of Permanent Closure in Accordance with 401 KAR 42:070. (1) Reimbursement requests~~
21 ~~for costs incurred for optional soil removal outside of the excavation zone shall be submitted on~~
22 ~~the "Over Excavation" worksheet, DEP 6066E, (August 2006).~~

~~(2) The claim request shall include the following documentation if the costs submitted were incurred after the effective date of this administrative regulation:~~

~~(a) "Claim Request Form", DEP 6064, (January 2006);~~

~~(b) "Invoice Listing Form", DEP 6065, (January 2006);~~

~~(c) "Over-Excavation" worksheet, DEP 6066E, (August 2006);~~

~~(d) Original invoices as required in the "Contractor Cost Outline", (August 2006); and~~

~~(e) Backup documentation required to support each task as required on the worksheet.~~

~~(3) Reimbursements shall be contingent upon a determination by the cabinet that the submitted reports are accurate and complete.~~

~~Section 15. Claims for Miscellaneous Tasks. (1) The "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006) shall be completed to initiate reimbursement for the following actions:~~

~~(a) Nonemergency initial abatement actions pursuant to 401 KAR 42:060 conducted prior to a directive being issued by the cabinet;~~

~~(b) Transportation and disposal of drums containing purged water or soil cuttings not reimbursed on a previous claim;~~

~~(c) Initial review of facility information by a newly contracted certified company and contractor having no previous knowledge of the facility;~~

~~(d) Decommissioning of cisterns or drinking water wells as required to address conditions at the regulated facility;~~

~~(e) Monitoring well pad replacement;~~

~~(f) Tank and line tightness testing, as requested in writing by the cabinet, for corrective action activities;~~

1 (g) Encroachment permit or off-site access agreements, if required by the cabinet;

2 (h) Dye trace tests;

3 (i) Backfill subsidence repair; or

4 (j) Corrective action activities proposed by the petroleum storage tank owner or operator,
5 or directed by the cabinet that do not include a unit cost listed in this administrative regulation.

6 (2) ~~The claim request shall include the following documentation if the incurred costs~~
7 ~~submitted were initiated after the effective date of this administrative regulation:~~

8 (a) ~~"Claim Request Form", DEP 6064, (January 2006);~~

9 (b) ~~"Invoice Listing Form", DEP 6065, (January 2006);~~

10 (c) ~~"Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);~~

11 (d) ~~Original invoices as required in the "Contractor Cost Outline", (August 2006); and~~

12 (e) ~~Backup documentation to support each task as required on the worksheet.~~

13 (3) ~~Reimbursements shall be contingent upon a determination by the cabinet that the~~
14 ~~submitted reports are accurate and complete, in accordance with 401 KAR 42:060.~~

15 ~~Section 16. Claims for Facility Restoration. (1) A reimbursement request for costs related~~
16 ~~to facility restoration shall include the following information:~~

17 (a) ~~"Claim Request Form", DEP 6064, (January 2006);~~

18 (b) ~~"Invoice Listing Form", DEP 6065, (January 2006);~~

19 (c) ~~"Facility Restoration" worksheet, DEP 6066I, (August 2006);~~

20 (d) ~~Original invoices as required in the "Contractor Cost Outline", (August 2006);~~

21 (e) ~~Backup documentation required to support each task as required on the worksheet;~~

22 and

1 (f) A site map for a facility, to scale, depicting the area impacted by corrective action (for
2 example, over excavation), the area of facility restoration and photographs of the area before and
3 after facility restoration.

4 (2) Reimbursements shall be contingent upon a determination by the cabinet that the
5 submitted reports are accurate and complete, in accordance with 401 KAR 42:060.

6 Section 17. Corrective Action Agreements. At the time the cabinet approves an owner or
7 operator's interim or final corrective action plan pursuant to 401 KAR 42:060, the cabinet and
8 the owner or operator shall for purposes of reimbursement enter into a Corrective Action
9 Agreement which shall set forth:

10 (1) Method of reimbursement;

11 (2) Amount to be reimbursed; and

12 (3) Rate or schedule of payment.

13 Section 18. Criteria for Approval of a Claim. (1) A claim with an approved Application
14 for Assistance for the Financial Responsibility Account or the Petroleum Storage Tank Account
15 shall be reviewed to determine if:

16 (a) The corrective action complies with 401 KAR Chapter 42 and written directives from
17 the cabinet;

18 (b) Each cost is necessary, reasonable and consistent with the requirements of 401 KAR
19 Chapter 42 and written directives from the cabinet;

20 (c) The claim form is accurate and complete;

21 (d) All supplemental information has been supplied;

22 (e) The applicant has complied with Section 25 of this administrative regulation; and

23 (f) Annual tank fees have been paid as required by KRS 224.60-150.

1 ~~(2) Reimbursement shall be made by a check remitted to the eligible petroleum storage~~
2 ~~tank owner or operator.~~

3 ~~Section 19. Eligible Reimbursement Rates. Established unit costs and rates for eligible~~
4 ~~reimbursement are identified in the "Contractor Cost Outline", (August 2006) incorporated by~~
5 ~~reference in Section 26 of this administrative regulation.~~

6 ~~Section 20. Signatures. (1) Forms required by this administrative regulation for which a~~
7 ~~signature is mandated shall be signed by an eligible petroleum storage tank owner or operator as~~
8 ~~follows:~~

9 ~~(a) For a corporation, by:~~

10 ~~1. A president or secretary;~~

11 ~~2. The duly authorized representative or agent of the president or secretary if the~~
12 ~~representative or agent is responsible for overall operation of the facility; or~~

13 ~~3. A person designated by the board of directors by means of a corporate resolution.~~

14 ~~(b) For a partnership, sole proprietorship or individual, by a general partner, the~~
15 ~~proprietor or individual respectively; or~~

16 ~~(c) For a municipality, by:~~

17 ~~1. A principal;~~

18 ~~2. Executive officer; or~~

19 ~~3. Ranking elected official.~~

20 ~~(2) A claim form or Application for Assistance shall also be signed by:~~

21 ~~(a) The certified contractor who is responsible for overseeing corrective action, unless~~
22 ~~corrective action commenced prior to March 1, 1995; and~~

1 ~~(b) An authorized representative of the certified company, unless corrective action~~
2 ~~commenced prior to July 1, 1999.~~

3 ~~(3) The owner or operator shall submit documentary evidence to substantiate the legality~~
4 ~~of an authorized representative's power of agency or power of attorney.~~

5 ~~Section 21. Loss of Future Reimbursement Eligibility. (1) A petroleum storage tank~~
6 ~~owner or operator shall be ineligible to receive future reimbursement from the Financial~~
7 ~~Responsibility Account or Petroleum Storage Tank Account if the petroleum storage tank owner~~
8 ~~or operator has:~~

9 ~~(a) Knowingly or intentionally submitted false or inaccurate information to the cabinet; or~~

10 ~~(b) Knowingly made a false statement, representation, or certification in an application,~~
11 ~~reimbursement request, or other document submitted to the cabinet.~~

12 ~~(2) A cost incurred by, or paid from, the cabinet which is based on false or inaccurate~~
13 ~~information, or a false statement, representation, or certification shall be recovered by the cabinet~~
14 ~~from the person who asserted the false or inaccurate information, or false statement,~~
15 ~~representation, or certification.~~

16 ~~(3) The cabinet shall have the right to recover the money paid to a petroleum storage tank~~
17 ~~owner or operator, or a contractor if:~~

18 ~~(a) The amount was paid due to an error of the cabinet;~~

19 ~~(b) The amount was paid due to a mistake, error, or inaccurate information in the claim~~
20 ~~submitted by the petroleum storage tank owner or operator or in an invoice submitted by a~~
21 ~~contractor; or~~

22 ~~(c) A person has obtained reimbursement from the cabinet by fraud or intentional~~
23 ~~misrepresentation.~~

1 ~~Section 22. Subrogation. Prior to making reimbursement of a claim, the cabinet shall~~
2 ~~acquire, by subrogation, the rights of the person receiving reimbursement to recover the amounts~~
3 ~~paid by the cabinet for the performance of corrective action from the person responsible or liable~~
4 ~~for the release.~~

5 ~~Section 23. Facility Inspections. The cabinet may conduct inspections in accordance with~~
6 ~~KRS 224.60-130(1)(l) to determine the reasonableness and necessity of the costs of corrective~~
7 ~~action.~~

8 ~~(1) The cabinet shall be authorized to enter and inspect a facility seeking reimbursement~~
9 ~~for the costs of corrective action.~~

10 ~~(2) Refusal to allow a cabinet employee entry and inspection of a facility shall make the~~
11 ~~owner or operator ineligible for reimbursement. Money previously paid to the petroleum storage~~
12 ~~tank owner or operator of the facility shall be repaid to, or recovered by, the cabinet.~~

13 ~~(3)(a) Cabinet personnel shall be present at the facility during all petroleum storage tank~~
14 ~~permanent closure activities, except as provided in paragraphs (d) and (e) of this subsection;~~

15 ~~(b) A petroleum storage tank owner or operator shall contact the appropriate Field~~
16 ~~Operations Branch regional office, by certified mail, to schedule a date to have an inspector~~
17 ~~present at the facility during petroleum storage tank permanent closure activities. The certified~~
18 ~~mail notice shall be received a minimum of fourteen (14) calendar days prior to commencement~~
19 ~~of the permanent closure;~~

20 ~~(c) If the inspector cannot be present at the facility on the day scheduled by the notice~~
21 ~~sent as required in paragraph (b) of this subsection, he may, by written notice, require the~~
22 ~~petroleum storage tank owner or operator to reschedule the permanent closure to a proposed~~

1 ~~date. This notice must be mailed by the cabinet no later than ten (10) days prior to the date~~
2 ~~scheduled by the petroleum storage tank owner;~~

3 ~~(d) If the inspector fails to issue notice to reschedule the permanent closure, or is not~~
4 ~~present on the day set by the notice, the permanent closure may proceed without penalty; and~~

5 ~~(e) This provision shall not apply to an emergency removal ordered by the cabinet.~~

6 ~~(4)(a) A petroleum storage tank owner or operator shall:~~

7 ~~1. Provide an inspector full access to an area or well for the collection of samples;~~

8 ~~2. Split samples obtained at the facility with the cabinet, if required by the inspector;~~

9 ~~3. Resample an area or well for which the result of analytical testing obtained by the~~
10 ~~cabinet differs significantly from the result obtained by the petroleum storage tank owner or~~
11 ~~operator; and~~

12 ~~4. Have the burden of proving the validity of analytical results, if a discrepancy remains~~
13 ~~after resampling.~~

14 ~~(b) The cabinet shall not reimburse the costs of resampling, if the cabinet determines that~~
15 ~~proper sampling, sample handling or analytical protocols were not adhered to by the contractor~~
16 ~~or certified laboratory.~~

17 ~~(c) Failure to allow sample collection, or to split samples with the cabinet, shall render~~
18 ~~the owner or operator ineligible for reimbursement.~~

19 ~~Section 24. Affidavits and Waivers. The following forms shall be submitted to the~~
20 ~~cabinet prior to reimbursement:~~

21 ~~(1) "Payment Verification Affidavit Form", DEP 6075, (January 2006); and~~

22 ~~(2) If required by KRS 224.60-140(18), a "Payment Waiver Form", DEP 6077, (January~~
23 ~~2006) executed by each affected vendor and subcontractor.~~

1 ~~Section 25. Account Balance. (1) The unobligated balance of the Financial Responsibility~~
2 ~~Account shall not be less than \$1,500,000, so as to ensure a \$1,000,000 reserve balance adequate~~
3 ~~to meet federal financial responsibility requirements for participants in the account and a~~
4 ~~\$500,000 reserve balance for emergency abatement action by the cabinet pursuant to KRS~~
5 ~~224.60-135. The \$500,000 reserved for the cabinet's emergency abatement actions shall be~~
6 ~~renewed in that amount annually.~~

7 ~~(2) If the unobligated balance of the Financial Responsibility Account is \$1,500,000 or~~
8 ~~less, or the reimbursement of additional claims would cause the unobligated balance of the fund~~
9 ~~to be less than \$1,500,000, the cabinet shall immediately suspend claim reimbursements and the~~
10 ~~approval of applications until the unobligated balance is greater than \$1,500,000. When the~~
11 ~~suspension is lifted, the priority of reimbursement for claims submitted related to an approved~~
12 ~~application for assistance shall be determined by the date of the claim submittal.~~

13 ~~Section 26. Incorporation by Reference. (1) The following material is incorporated by~~
14 ~~reference:~~

15 ~~(a) "Application for Assistance", DEP 6063, (August 2006);~~

16 ~~(b) "Claim Request Form", DEP 6064, (January 2006);~~

17 ~~(c) "Invoice Listing Form", DEP 6065, (January 2006);~~

18 ~~(d) "Capital Equipment Claim Form", DEP 6070, (January 2006);~~

19 ~~(e) "Capital Equipment Preapproval Purchase/Rental Request", DEP 6071, (January~~
20 ~~2006);~~

21 ~~(f) "Payment Verification Affidavit", DEP 6075, (January 2006);~~

22 ~~(g) "Payment Waiver Form", DEP 6077, (January 2006);~~

1 ~~(h) "Environmental Response Team Declared Emergency" worksheet, DEP 6066A,~~
2 ~~(August 2006);~~

3 ~~(i) "Initial Abatement & Free Product Recovery" worksheet, DEP 6066B, (August 2006);~~

4 ~~(j) "Initial and Intermediate Site Investigation and Site Check for Facilities" worksheet,~~
5 ~~DEP 6066C, (August 2006);~~

6 ~~(k) "Final Site Investigation for a Facility" worksheet, DEP 6066D, (August 2006);~~

7 ~~(l) "Over Excavation" worksheet, DEP 6066E, (August 2006);~~

8 ~~(m) "Quarterly Monitoring Reports and System Maintenance" worksheet, DEP 6066G,~~
9 ~~(August 2006);~~

10 ~~(n) "Miscellaneous Tasks" worksheet, DEP 6066H, (August 2006);~~

11 ~~(o) "Facility Restoration" worksheet, DEP 6066I, (August 2006);~~

12 ~~(p) "Third Party Claim Form", DEP 6078, (January 2006); and~~

13 ~~(q) "Contractor Cost Outline", (August 2006).~~

14 ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright~~
15 ~~law, at the Underground Storage Tank Branch, 81 C. Michael Davenport Boulevard, Frankfort,~~
16 ~~Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m., excluding state holidays. This~~
17 ~~material is also available on the Division of Waste Management's Web page located at~~
18 ~~www.waste.ky.gov.]~~

401 KAR 42:250 approved for filing.

7/13/11
Date



Leonard K. Peters, Secretary
Energy and Environment Cabinet

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for administration of the PSTEAF.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish procedures for the administration of the PSTEAF.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing procedures for administration of the PSTEAF and reimbursement from PSTEAF.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing the procedures for administration of the PSTEAF.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment adjusts rates in the Contractor Cost Outline, deletes the provisions related to salvage value, and amends the forms to be consistent with these changes.

(b) The necessity of the amendment to this administrative regulation:

This amendment is necessary to adjust rates in the Contractor Cost Outline, delete the provisions related to salvage value, amend the forms to be consistent with these changes.

(c) How the amendment conforms to the content of the authorizing statutes:

The amendment conforms to the content of the authorizing statutes adjusting the rates in the Contractor Cost Outline, deleting the provisions related to salvage value, and amending the forms to be consistent with these changes.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment will assist in the effective administration of the statutes by allowing a more efficient way to administer the PSTEAF.

(3) List the type and number of individuals, businesses, organizations, or state and local

governments affected by this administrative regulation:

There are approximately 3,700 UST facilities registered in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

They will have to submit reimbursement claims on the forms incorporated in this amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The forms are available on the Division of Waste Management's website and should not cost any extra to fill out.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

By complying, eligible PSTeAF applicants may be reimbursed for the costs of corrective action.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

(b) On a continuing basis:

The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

This amendment is funded by the PSTeAF.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in funding is not necessary to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This amendment does not establish or affect any fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is applied. The deductible for petroleum storage tank owners is based on the number of tanks owned.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:250

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 224.60-120; 2224.60-130

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This amendment will not generate any revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This amendment will not generate any revenue.

(c) How much will it cost to administer this program for the first year?

The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

(d) How much will it cost to administer this program for subsequent years?

The rates in the Contractor Cost Outline have increased. This will have a cost associated with it, but an exact amount is unknown.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Detailed Summary of Material Incorporated by Reference

I. This administrative regulation incorporates by reference the "Application for Assistance", DEP 6063, (April 2011). This document is to be submitted by petroleum storage tank owners and operators seeking reimbursement from the PSTÉAF for corrective actions.

This document consists of 6 pages.

II. This administrative regulation incorporates by reference the "Affidavit of Termination of Contract", DEP 0061, (April 2011). This document is to be submitted when a petroleum storage tank owner or operator ends a contract with an eligible company or partnership.

This document consists of 1 page.

III. This administrative regulation incorporates by reference the "Reimbursable Amount Re-Evaluation", DEP 0062, (April 2011). This document is to be used when a cost estimate is needed to complete the scope of work.

This document consists of 2 pages.

IV. This administrative regulation incorporates by reference the "Claim Request for Actions Not Directed by the USTB", DEP 6064, (April 2011). This document is to be submitted for reimbursement for activities that were not directed in writing by the USTB.

This document consists of 2 pages.

V. This administrative regulation incorporates by reference the "Miscellaneous Task Reimbursement Worksheet", DEP 6093, (April 2011). This document is to be submitted for reimbursement for miscellaneous tasks performed at the written direction of the cabinet.

This document consists of 5 pages.

VI. This administrative regulation incorporates by reference the "Facility Restoration Reimbursement Worksheet", DEP 6095, (April 2011). This document is to be submitted for reimbursement of facility restoration activities.

This document consists of 6 pages.

VII. This administrative regulation incorporates by reference the "Optional Soil Removal Outside the Excavation Zone Reimbursement Worksheet", DEP 6094, (April 2011). This document is to be submitted for reimbursement of costs of optional soil removal activities.

This document consists of 5 pages.

VIII. This administrative regulation incorporates by reference the "Payment Verification Affidavit", DEP 6075, (April 2011). This document is to be submitted to verify payment of contractors for the work performed at the UST facility.

This document consists of 1 page.

IX. This administrative regulation incorporates by reference the "Payment Waiver", DEP 6077, (April 2011). This document is to be used to waive the right to reimbursement from the PSTEAF.

This document consists of 2 pages.

X. This administrative regulation incorporates by reference the "Cost Estimate", DEP 6090, (April 2011). This document is to be submitted when a cost estimate is necessary for a scope of work directed by the USTB.

This document consists of 2 pages.

XI. This administrative regulation incorporates by reference the "USTB Written Directive Claim Request", DEP 7118, (August 2009). This document is to be submitted for claims that are directed in writing by the USTB.

This document consists of 1 page.

XII. This administrative regulation incorporates by reference the "Contractor Cost Outline", (April 2011). This document establishes the rates associated with activities and equipment used in the performance of corrective action at UST facilities.

This document consists of 13 pages.

STATEMENT OF CONSIDERATION RELATING TO
401 KAR 42:250
Amended After Comments

Energy and Environment Cabinet
Department for Environmental Protection
Division of Waste Management

I. A public hearing on 401 KAR 42:250 was held on May 24, 2011 at 10:00 a.m. in Conference Room 301 D at 300 Fair Oaks Lane, Frankfort, Kentucky, 40601. No verbal comment was provided on 401 KAR 42:250.

II. The following people submitted written comments:

<u>Name and Title</u>	<u>Affiliation</u>
Jenna Daniels, Accounting Manager	Hinkle-Meyer Environmental Services, (HMES)
Karen Thompson, P.G.	Smith Management Group (SMG)
Mark Rust, Principal	Chase Environmental
Richard Maxedon, President	Kentucky Petroleum Marketers Association (KPMA)
Tim Crumbie, P.G.	GeoScience
Bob Burns, P.G.	Kentuckians for the Commonwealth (KFTC)

III. The following people responded to comments:

<u>Name and Title</u>	<u>Affiliation</u>
Anthony Hatton, Director	Division of Waste Management
Rob Daniell, Manager, UST	Division of Waste Management
Cassandra Jobe, Supervisor, PPA	Division of Waste Management

IV. Summary of Comments and Responses

(1) Subject matter: Timeframes for technical review.

(a) Comment: Jenna Daniels, HMES.

These regulations do not address deadlines for the Underground Storage Tank Branch to review reports or to reimburse for claims that are submitted for payment.

- (b) **Response:**
The Division does not believe it is appropriate to set arbitrary goals for technical review. However, the Division believes the revisions to these regulations will lead to increased efficiency.
- (2) **Subject matter: Evaluation of all costs.**
- (a) **Comment: Jenna Daniels, HMES.**
In some cases, the projects have been acquired in the middle of remedial activities and the current consultant may be working on the losing end of the project. It is reasonable to expect that all rates, no matter the phase of work, be adequate for the task this being performed.
- (b) **Response:**
The Division does not dictate to eligible companies or partnerships which UST sites to contract for performance of corrective action. This is a business decision of the eligible company or partnership.
- (3) **Subject matter: Fuel index.**
- (a) **Comment: Jenna Daniels, HMES.**
The USTB should consider adding a fuel index for fluctuations in fuel rates.
- (b) **Response:**
Amendments to the contractor cost outline include a fuel rate of \$5.00 per gallon. The Division believes this rate accounts for the cost of fuel for the foreseeable future.
- (4) **Subject matter: Asphalt/Concrete replacement reimbursement.**
- (a) **Comment: Jenna Daniels, HMES.**
Why did the USTB go to lowest bid on asphalt/concrete replacement? How many bids need to be submitted?
- (b) **Response:**
Due to the fluctuating cost of asphalt and concrete, in order to ensure the fairest reimbursement rate for this activity, the Division instituted a three bid process.
- (5) **Subject matter: Price of backfill.**
- (a) **Comment: Jenna Daniels, HMES.**
The rates for reimbursement of backfill did not go up.
- (b) **Response:**
The Division disagrees. These rates were increased from the 2006 regulations to account for the increase fuel costs and backfill material costs.
- (6) **Subject matter: Tiering of backfill rates.**
- (a) **Comment: Jenna Daniels, HMES.**
Increase the number of tiers for reimbursement of backfill material.
- (b) **Response:**
The Division disagrees. The current tiering system is adequate, and the rates were increased to account for increased fuel costs and backfill material costs.
- (7) **Subject matter: Fuel surcharges.**
- (a) **Comment: Jenna Daniels, HMES.**

The USTB should allow for fuel surcharges that are passed along to the consultant from vendors.

(b) Response:

The Division disagrees. The cost of fuel is included for directed actions for which there is a formulated task rate established. Actions directed that do not have a formulated task rate will be reimbursed on the basis of an approved cost estimate or through a bid process.

(8) Subject matter: Rates for drum disposal.

(a) Comment: Jenna Daniels, HMES.

The rates for drum disposal and transportation need to be increased.

(b) Response:

The Division increased the transportation and disposal costs for drums by 8%.

(9) Subject matter: Off-site access agreements.

(a) Comment: Jenna Daniels, HMES.

There should not be two rates for off-site access agreements. It costs the same amount to obtain the first off-site access agreement as it does any addition agreement.

(b) Response:

The Division disagrees. Additional access agreements would not typically require the same level of effort as the initial access agreement. Therefore, no changes were made.

(10) Subject matter: Reclassification.

(a) Comment: Jenna Daniels, HMES.

The rate for reclassification of a facility should be increased.

(b) Response:

The Division disagrees. The Classification Guide is streamlined and the formulated task rate established is adequate.

(11) Subject matter: Over-excavation reports.

(a) Comment: Jenna Daniels, HMES.

There should not be two rates for over-excavation reports.

(b) Response:

The Division disagrees. The over excavation report submitted in response to a written directive requires only the information on DEP 4067. The management of weight tickets and manifests is not required for the submittal of this technical report. Those documents are required for claim submittal and these activities are non-reimbursable in accordance with 401 KAR 42:250.

(12) Subject matter: Risk Assessment in the Contractor Cost Outline.

(a) Comment: Karen Thompson, SMG

On page 10 of the contractor Cost Outline a cost is provided for a Risk Assessment (Tier II) and a Risk Assessment (Tier III). However the terms Tier II and Tier III have not been referenced or defined. IS the branch referring to EPA Risk Assessment Guidance for Superfund? This should be referenced to ensure the level of completeness is consistent from contractor to contractor.

- (b) **Response:**
The Division is referring to the EPA Risk Assessment Guidance for Superfund. For clarification, the Division has removed the distinction of Tier II and Tier III.
- (13) **Subject matter: Tasks and Responsibilities in the Contractor Cost Outline.**
- (a) **Comment: Karen Thompson, SMG**
We agree with having a cost for a toxicologist engage in the risk assessment/evaluation of a site. The description in Appendix A does not provide a description of acceptable qualifications for the toxicologist. Please clarify the acceptable credentials (e.g. experience, education) for a toxicologist under this program. For example, a Master's degree or greater in toxicology or a related field.
- (b) **Response:**
The Division disagrees. The Division anticipates that the eligible company or partnership will employ qualified individuals to serve in specified capacities. The only specified credentials established are for a PE or PG. Therefore, no changes made.
- (14) **Subject matter: Initial Site Surveys in the Contractor Cost Outline.**
- (a) **Comment: Karen Thompson, SMG**
Section 3 of the investigation outlines and page 7 section 2.10 of the Contractor outline discuss the initial survey which must be stamped by a PE or PG. Isn't a survey of buildings, elevations and property lines in the purview of a PLS? The initial survey should be completed and stamped by a PLS. Understanding this, the cost outline should reflect a survey completed by the PLS.
- (b) **Response:**
The initial site survey requires an approximation of the features present at a UST facility. Therefore, a Professional Land Surveyor should not be necessary to complete the initial site survey. No change made due to this comment.
- (15) **Subject Matter: Monitoring Well Installation.**
- (a) **Comment: Mark Rust, Chase Environmental**
The average wells per day should be 3; rates should be increased for installation.
- (b) **Response:**
The Division believes that with current state of technology, 4 wells can be reasonably installed in an 8-hour day. Therefore, the rate was not adjusted.
- (16) **Subject matter: Reclassification.**
- (a) **Comment: Richard Maxedon, KPMA.**
If the water is contaminated, proper removal / disposal of this water is, by nature and definition, corrective action – and thus should be reimbursable. Why then are compliant tank owners who are removing tanks outside of the SOTRA program and encounter contaminated water not allowed to seek cost recovery via reimbursement? Many SOTRA sites are non-compliant, whereas many tank removals done by owners who are bearing the expense of tank removal are compliant. However, under the current proposed draft New Regulations, compliant owners are unduly penalized when performing corrective action via contaminated water disposal. We believe that it would be inconsistent and inequitable to allow contaminated water disposal to be reimbursed when the Fund bears

the cost of tank removal, but not to allow reimbursement in non-SOTRA situations when the tank owner is bearing the cost of tank removal.

(b) Response:

401 KAR 42:250 contains provisions for the reimbursement of transportation and disposal of water and backfill, contaminated above applicable screening levels, removed from the excavation zone during permanent closure activities, regardless of SOTRA eligibility. Reference lines 14-17 on page 15 of the regulation.

(17) Subject Matter: Corrective Action Monitoring Reports.

(a) Comment: Tim Crumbie, GeoScience

In Section 2.16 of 401 KAR 42:250, the rate allowed for groundwater monitoring reports (i.e.: Corrective Action Monitoring Reports) should be based (in part) on the number of wells required to be sampled. Less time is required to complete a monitoring report where there are only five (5) or six (6) wells present as compared to twenty (20) or thirty (30) wells. For sites with more wells, additional time would be needed to evaluate data, summarize results and construct contaminant plume and/or potentiometric surface maps. Incremental cost increases should be allowed based on the number of wells involved.

(b) Response:

The Division increased the cost of the CAM for an active system to \$1,190. The Division has to assume an average cost associated with a specific task. An attempt to try to tier formulated task rates in accordance with the complexity of an individual site would be impracticable.

(18) Subject Matter: Site Check Reports.

(a) Comment: Tim Crumbie, GeoScience

The costs for the Site Check Report, given the amount of information required, still seem low. Researching the site history, geology, incident, surrounding area, summarizing the site activities and results, a preparing a class guide will require more than the six (6) hours allotted.

(b) Response:

The Division disagrees. The Site Check Report has been streamlined. The Division believes the cost is sufficient to complete the report.

(19) Subject Matter: Site Check Outline.

(a) Comment: Tim Crumbie, GeoScience

The Site Check Outline requires that a P.G. or P.E. complete a class guide but the cost calculations only allow for a technician to complete the field portion of the work. In Section 2.14 of 401 KAR 42:250, when a new class guide is required as a stand alone task, the professional is essentially allowed one (1) hour to fill out the form. The way the cost regulations are proposed, a field technician is allowed to go into the field, make any observations/decisions and report back to a P.G. or P.E., who must then complete the class guide based on the technician's observations. Essentially the technician would be making the observations/interpretations while the P.G./P.E. is just putting the Tech's information on the form.

(b) Response:

The Division disagrees. However, the Division has added a cost for the field work associated with a Class Guide that is necessary as part of a Site Check.

(20) Subject Matter: Reimbursement.

(a) Comment: Tim Crumbie, GeoScience

401 KAR 42:250, page 27, line 3 lists the conditions under which the Cabinet will have the right to recover money paid to the owner, operator or contractor. Line 5 under this section states that money can be recovered if it was paid as the result of an error by the Cabinet. This should only apply if the error has not resulted in expenses having been incurred by the owner, operator, consultant or contractor. If the USTB has advised, directed or otherwise instructed that work is/was to be performed and would be reimbursable, and that work (or a portion thereof) was completed as directed, then costs associated with the performance of those tasks should be reimbursable and not be recoverable by the Cabinet if it is later determine the instruction or directive was given in error. This is only fair as the owner/operator and consulting community are held responsible for mistakes, and should not be held responsible by mistakes made by the Cabinet.

(b) Response:

The regulation states "The amount was paid due to an error of the cabinet in processing a claim for reimbursement;" This is specific to the processing of the claim for reimbursement. Therefore, no change has been made in response to this comment.

(21) Subject Matter: Monitoring Well Installation and Maintenance.

(a) Comment: Bob Burns, KFTC

Contractors are being paid for the installation and maintenance of monitoring wells, but are not installing them properly. These monitoring wells are not being maintained. Monitoring wells have been documented as being in need of repair. There is no timeframe established for getting this work done.

(b) Response:

The Division has taken the appropriate actions to require proper installation and maintenance of monitoring wells. These are regulated by the Division of Water. In the event that the Division becomes aware that monitoring wells are in need of repair, a directed will be issued to require such activity. The directive will contain a timeframe for which the repair or abandonment of the well shall be completed.

(22) Subject Matter: Define "Scientist".

(a) Comment: Bob Burns, KFTC

Define "scientist".

(b) Response:

The duties of a scientist are identified in Appendix A of the Contractor Cost Outline.

(23) Subject Matter: Hydraulic Testing.

(a) Comment: Bob Burns, KFTC

Geologist should be performing hydraulic tests.

(b) Response:

The Division has amended the language in the Contractor Cost Outline to say 'assist in the performance of hydraulic testing'.

(24) Subject Matter: Free-product Removal.

(a) Comment: Richard Maxedon, KPMA.

If free product is discovered in the excavation zone, current regulations do not allow for reimbursement of free product from the excavation zone. However, the facility is required to immediately abate the suspected release and submit an initial abatement report. Would it not be more cost effective to remove the source of contamination during the initial release rather than wait until the free product spreads off site which greatly increases the overall project costs that would be reimbursable? We believe that clarification of this issue would better foster compliance and immediate action, where warranted.

(b) Response:

The Division agrees that there is a need for expedited removal of free product from the uncontained portion of an excavation zone of an active UST system. Upon the discovery of free product within the excavation zone, the Division of Waste Management inspector will confirm the presence of product within a observation well and will notify ERT if product is present. The recovery of free product from within the excavation zone at the direction of ERT under a declared emergency is eligible for PSTeAF reimbursement.

(25) Subject Matter: Product in the excavation zone.

(a) Comment: Tim Crumbie, GeoScience

If product is detected in a tank excavation, an environmental emergency should automatically be declared and the costs associated with recovery and disposal should be reimbursed (as emergency response [ERT] or corrective action [USTB]). This course of action is preferable because: 1) the likelihood of recovery is significantly increased because the fuel is largely contained within the excavation, 2) final clean-up costs would be minimized because the plume will not have had time to spread, and 3) the potential for vapor intrusion will be minimized.

(b) Response:

The Division disagrees. The declaration of environmental emergencies is not within the authority of the USTB. Therefore, no change has been made. For active tank systems, see response (24) to KPMA (similar issue).

(26) Subject Matter: Initial Quarterly Monitoring Reports.

(a) Comment: Tim Crumbie, GeoScience; William Ackland, SRW

The costs for initial quarterly monitoring reports have been eliminated.

(b) Response:

As an initial quarterly monitoring report no longer exists, there is no cost associated. The reporting cost for completion of DEP 8045 will be \$806 for UST facilities without an active remediation system and \$1125 for UST facilities with active remediation systems.

(27) Subject Matter: Over-excavation

(a) Comment: William Ackland, SRW

For over-excavation water removal, the water must be sampled to verify it exceeds screening levels in order to obtain reimbursement. Water removal is often a significant expense and necessary for the integrity of the excavation (if not for direct groundwater remediation). If the water must be removed for stability and to excavate additional soil, then removal, and either storage or disposal costs, should be covered regardless of analytical results.

If the water is not disposed, then it must be stored on-site pending receipt of analytical results. This requires use of large (i.e. frac or Baker) tanks which are not feasible at many sites. Mobilization and rental of tanks and rental of a suitable pump must be arranged and costs incurred before the field work, let alone receipt of analytical results. These costs will exceed the allowed per gallon pumping rates unless larger quantities of water are extracted. Then, permits may be required to discharge the water, and an additional site visit and perhaps prolonged stay will be necessary to safely discharge the water – all non-reimbursable if the analytical results are not high enough.

The option is paying portal to portal hourly rates for a vacuum truck. This option is more expensive for large volumes. Also, vacuum trucks usually have lower pump rates which are not suitable for dewatering a cavity to keep up with a dynamic excavation. Furthermore, the disposal costs are incurred prior to receipt of analytical results with a vacuum truck.

By making reimbursement contingent upon elevated analytical results, the USTB is requiring the contractor to risk “eating” the costs of water transport and disposal when a frac tank cannot be situated on the site. For larger sites, the USTB is requiring the contractor to risk “eating” the cost of frac tank mobilization along with pump and tank rental.

SRW understands the USTB’s desire to not pay for disposal of “clean” water. However, the only equitable solution for *directed excavations* appears to be for the USTB to cover the transport and disposal (vacuum truck rates) at sites which cannot house a frac tank – regardless of analytical results obtained after-the-fact. For larger sites, the USTB should cover the costs of frac tank mobilization along with tank and pump rental. If analytical results show the water is clean, then an additional mobilization, site time and any applicable permit fees should be covered for discharge. Otherwise, transport and disposal should be covered. However, the cost of an additional mobilization and site time to oversee discharge at a rate which will not cause erosion could conceivably exceed disposal costs. Naturally, analytical results will have to be rushed (100% markup) to keep rental costs to a minimum.

(b) Response:

The formulated task rate established for over-excavation activities directed in writing by the USTB has increased. Increases to the formulated task rates established compensate for water management that may be necessary during the performance of over-excavation activities, in the rare instances in which analytical results indicate that the water is not contaminated above applicable screening levels.

(28) Subject Matter: Pit water reimbursement.

(a) Comment: William Ackland, SRW

Reimbursement of over-excavation pit water is contingent upon analytical confirmation of concentrations in excess of screening levels.

Water removal is often a significant expense and necessary for the integrity of the excavation (if not for direct groundwater remediation). If the water must be removed for stability and to excavate additional soil, then removal, and either storage or disposal costs, should be covered regardless of analytical results.

If the water is not disposed, then it must be stored on-site pending receipt of analytical results. This requires use of large (i.e. frac or Baker) tanks which are not feasible at many sites. Mobilization and rental of tanks and rental of a suitable pump must be arranged and costs incurred before the field work, let alone receipt of analytical results. These costs will exceed the allowed per gallon pumping rates unless larger quantities of water are extracted. Then, permits may be required to discharge the water, and an additional site visit and perhaps prolonged stay will be necessary to safely discharge the water – all non-reimbursable if the analytical results are not high enough.

The option is paying portal to portal hourly rates for a vacuum truck. This option is more expensive for large volumes. Also, vacuum trucks usually have lower pump rates which are not suitable for dewatering a cavity to keep up with a dynamic excavation. Furthermore, the disposal costs are incurred prior to receipt of analytical results with a vacuum truck.

By making reimbursement contingent upon elevated analytical results, the USTB is requiring the contractor to risk "eating" the costs of water transport and disposal when a frac tank cannot be situated on the site. For larger sites, the USTB is requiring the contractor to risk "eating" the cost of frac tank mobilization along with pump and tank rental.

SRW understands the USTB's desire to not pay for disposal of "clean" water. However, the only equitable solution for *directed excavations* appears to be for the USTB to cover the transport and disposal (vacuum truck rates) at sites which cannot house a frac tank – regardless of analytical results obtained after-the-fact. For larger sites, the USTB should cover the costs of frac tank mobilization along with tank and pump rental. If analytical results show the water is clean, then an additional mobilization, site time and any applicable permit fees should be covered for discharge. Otherwise, transport and disposal should be covered. However, the cost of an additional mobilization and site time to oversee discharge at a rate which will not cause erosion could conceivably exceed disposal costs. Naturally, analytical results will have to be rushed (100% markup) to keep rental costs to a minimum.

(b) Response:

The formulated task rate established for over-excavation activities directed in writing by the USTB has increased. Increases to the formulated task rates established compensate for water management that may be necessary during the performance of over-excavation activities, in the rare instances in which analytical results indicate that the water is not contaminated above applicable screening levels.

(29) Subject Matter: Markup

(a) Comment: William Ackland, SRW

Markup is not allowed on equipment purchase or rental. Reimbursement (purchase or rental) is limited to purchase price less salvage value. Salvage value is specified by

manufacturer or supplier. Some sort of markup must be allowed on rentals – especially from third parties. If the USTB requires rental of equipment as the lowest cost option, and no markup is allowed, then the eligible company is making all the expenditures and waiting for reimbursement with no profit. Then reimbursement will be cut off after so many months due to the salvage value, but the system may still be in operation. From that point on, the eligible company is out of pocket for all additional months of required use. If rental from a third party is required and approved, then all required months of use should be reimbursable regardless of salvage value and the primary consultant should be allowed the standard 15% markup unless the USTB will pay the subcontractor up-front and directly.

The other option is for the eligible company to purchase the equipment and rent it to the State. However, if the equipment has a high salvage value or is only used for a minimal time, then the contractor is carrying the brunt of the costs and getting a minimal reimbursement with no profit. The contractor would own the equipment afterwards, but may have no use for it. Also, a manufacturer quoted salvage value is good for the manufacturer, not the consultant. For example, say a consultant is required to purchase a \$50,000 piece of equipment with a \$40,000 manufacturer specified salvage value. The consultant then operates the equipment and obtains \$10,000 from the USTB for the difference. Rather than pay storage fees or watch the equipment rust, the consultant then has to sell the equipment back to the manufacturer or a clearinghouse for \$35,000 so the manufacturer or clearinghouse can sell it at the \$40,000 salvage value. In this scenario, the consultant just lost \$5,000 and was the bank.

In the best case scenario under the “buy” option, the consultant is out of pocket for the purchase price and will eventually see the principal refunded if the salvage value is zero. Even under this scenario, the consultant loses, as they are out-of-pocket for perhaps years, do not even get simple interest on their investment and may have to pay disposal costs for a worthless piece of equipment. If purchase is deemed the lowest cost option and is required and approved, then a markup should be allowed in order for the consultant to realize some small profit margin on a major expense. Based on historical practice, an 8% markup on major items would be appropriate unless the USTB desires to purchase the equipment directly and store, recondition, or dispose of it when through.

(b) Response:

The Division agrees it is unfair to ask the UST owner to front the salvage value cost for equipment. Therefore, the Division has decided to reimburse for the entire purchase price. The Division does not agree that a mark up is necessary for equipment purchase or rental.

(30) Subject Matter: Payment Verification

(a) Comment: William Ackland, SRW

A Payment Verification Affidavit from the responsible party and Payment Waiver Forms from all subcontractors (if not paid prior to the claim submittal date) must be submitted for all claims. Under the current regulations, these are only necessary for non-fixed cost claims. Furnishing these for all claims will increase the paperwork burden for both contractors and the state. Why not just leave the Payment Verification Affidavit and Payment Waiver Forms with the Claim Request Form for Actions Not Directed by the

USTB (DEP6064)? This would be roughly equivalent to the current regulations and would greatly decrease the form burden.

(b) Response:

KRS 224.60-140 requires that all persons filing a claim for reimbursement shall ensure full payment of the claims of all vendors. A vendor may waive his right to receive full payment before the claim is filed. Therefore, a change has not been made.

(31) Subject Matter: Concrete/Asphalt Replacement.

(a) Comment: William Ackland, SRW

Concrete/asphalt replacement will no longer be a fixed cost. The contractor must submit three bids and obtain pre-approval prior to initiating the work. SRW requests the USTB consider establishing a fixed cost even if the cost can only be met for urban areas. Rural areas may not be able to meet such a cost (fewer contractors, larger mobilization fees) and will have to submit three bids. However, at least the three bid process can be omitted for some sites. This would cut down on the paperwork for both consultant and Claims and Payments. Even if a site cannot meet the fixed cost, it may be more economical for the consultant to accept the cost rather than expend non-reimbursable time obtaining and documenting additional bids and securing the three bid process obligation.

(b) Response:

The Division attempted to obtain rates for performance of this activity from multiple companies that perform this type of work, including asphalt and concrete plants. The Division was not able to obtain enough information to set a fixed cost for concrete and asphalt. The Division intends to maintain the three bid process. Therefore, no change has been made.

(32) Subject Matter: Pumping and transport rates

(a) Comment: William Ackland, SRW

The existing pumping and transport rates are \$0.25/gallon. Based on current bids for existing SRW projects, this is inadequate to cover the costs. Two main options are available – use of vacuum trucks or frac tanks and tanker trucks. Vacuum truck rates will be the same no matter the number of gallons. The cost of frac tanks and a tanker truck (and trash pump rental) will be higher initially, but the per gallon rate declines with a corresponding increase in water volume.

For a current project in Knott County, vacuum truck bids to SRW are in the range of \$0.44 for pumping and transport and \$0.60 per gallon for solidification, cleaning and disposal. For the same project, the frac tank option low bid is \$3,200 for mobilization, rental and pumping (two weeks) and \$0.145 per gallon for transport of 5,500 gallons. This option decreases the disposal rate to the USTB approved range (<\$0.45/gallon). Therefore, a frac tank is the cheaper option if over 3,778 gallons are generated. However, 22,000 gallons would be necessary to reduce the per gallon removal and transport cost to \$0.287. This still exceeds the established rate of \$0.25/gallon. At 11,000 gallons, the rate would be \$0.429/gallon, which is comparable with the vacuum truck rate of \$0.44 per gallon. Either way, a cap of \$0.50/gallon would be more reasonable for the removal and transport rate. Some sites will still exceed this amount, but raising the rate from \$0.25 to \$0.50 should decrease the number of three bid requests and reviews.

- (b) **Response:**
The Division disagrees. The \$0.25/gallon is adequate based on an hourly rate of \$75/hour for a tank truck and operator. Therefore, no change has been made.
- (33) **Subject Matter: Field Equipment**
- (a) **Comment: William Ackland, SRW**
Surveying and field equipment/tools-of-the trade costs will be included in the drilling rates. Does this include soil borings? Soil borings have not previously been surveyed. Are borings now to be surveyed for a \$3 increase in the boring cost? This is not feasible. Either the per boring cost needs to be increased (\$400 per boring using current rates), or this section should specify surveying is not necessary for soil borings.
- (b) **Response:**
Soil borings are not required to be surveyed and the contractor cost outline has been amended to clarify when surveying is required.
- (34) **Subject Matter: Well installation**
- (a) **Comment: William Ackland, SRW**
The draft regulations include a new cost for well installation with no soil sampling. Under the current regulations, reviewers have specified several times that even if soil samples are not required, a lithology log and field screening are still required for well installation. The cost to generate a lithology log and field screening is not really any different from soil sampling. The cheaper way to go would be blind drilling. No lithology log or field screening is generated by blind drilling. Please clarify this point. Is the proposed installation without sampling rate really blind drilling? If a lithology log and field screening are still required, then the rate should not be decreased.
- (b) **Response:**
The Site Investigation Outline does not require a lithology log and field screening for the installation of a monitoring well that does not include the collection of soil samples. Therefore, the established rate is sufficient and no changes were made in response to this comment.
- (35) **Subject Matter: Bedrock Wells**
- (a) **Comment: William Ackland, SRW**
A different circumstance applies to bedrock well installation. Soil sampling down to bedrock can be performed, but generally only if a second drill rig is used. This generally is not too much of a problem as long as bedrock is shallow and other soil sampling is required during the same mobilization. However, soil sampling cannot be performed in bedrock unless a core drill is utilized, and that would take a higher rate. So for bedrock wells, would it not be more realistic to change "with soil sampling" to "with soil sampling to the bedrock interface"?
- (b) **Response:**
The Division does not believe there is a realistic expectation that soil samples will be collected from within a bedrock core. Therefore, no changes were made in response to this comment.
- (36) **Subject Matter: Well Decommissioning**

(a) **Comment: William Ackland, SRW**

Well decommissioning. With the recent Division of Water change in regulations, overdrilling is now required for all wells in excess of 30 feet or any well completed in bedrock. According to certified well installers, the cost to abandon such wells is only marginally less than the installation cost. So the \$792.30 per well abandonment cost is fine for wells ≤ 30 feet in unconsolidated materials. However, in order to comply with Division of Water regulations, a three bid process may very well have to be submitted for all other wells. In order to save time and paperwork, it may be prudent to establish a different base cost for abandonment of deeper and/or bedrock wells.

(b) **Response:**

The Division already accommodates for decommissioning a well greater than 30' (\$26.40 per foot). Please refer to Section 2.8 of the Contractor Cost Outline.

(37) **Subject Matter: Soil Borings**

(a) **Comment: William Ackland, SRW**

Soil borings now include an added \$2/foot for borings for over 30 feet. This is a good start. However, increasing the depth of a boring is not really a linear increase in time. For direct push work, adding ten feet to a 30 foot boring will increase the time and cost by about 50%. Adding another ten feet can more than double that. At \$303, the initial rate is \$10.10 per foot for 30 feet. With increased depth, this rate should increase, not decrease. Around \$15-\$20/foot may be appropriate. Prorating may be the way to go, with \$15 for each additional foot up to 40, and \$20 for each additional foot from 40 to 50. This way, two 45 foot borings and one 30 foot boring (a day's work) would be reimbursed for \$1,409 (\$91 less than the going day rate for a direct push rig) instead of \$969.

(b) **Response:**

The Division disagrees. The established rate accommodates adequately for the additional cost of borings exceeding 30'.

(38) **Subject Matter: Shoring Evaluation.**

(a) **Comment: William Ackland, SRW**

Shoring evaluation boring reimbursed at \$303. This is a good start, as historically, geotechnical borings were reimbursed per foot with no minimum charge per boring. The rate SRW typically sees is \$19.50 per foot. Granted, most geotechnical borings are relatively shallow, but in the event deeper borings are required, either an increased cost should be applicable or an additional reimbursement per foot for borings over a certain depth should be added.

(b) **Response:**

The Division established these rates based on actual cost submitted by contractors.

(39) **Subject Matter: Drum transport and disposal.**

(a) **Comment: William Ackland, SRW**

Drum transport and disposal costs are unchanged. When personnel rates and transport rates have been increased for all other areas of site investigation and remediation, why have the drum transport costs remained the same?

(b) **Response:**

The Division increased the transportation cost for drums by 8%.

(40) Subject Matter: Initial Site Survey.

(a) Comment: William Ackland, SRW

Initial Site Survey rate is specified as per 100 foot radius of excavation zone. The area of a circle = πR^2 . A 200 foot radius circle contains four times the surface area of a 100 foot radius circle. Therefore, a 200 foot survey should be four times (not two times) the cost of a 100 foot radius. A 300 foot radius circle contains nine times the area and should be nine times the cost of a 100 foot radius. Please specify the Initial Site Survey is *for* a 100 foot radius not *per* 100 foot radius.

(b) Response:

Section 3.1 of the Site Investigation Outline clarifies that an Additional Site Survey should be performed in the direction of confirmed contamination, and does not require a full radius be depicted, unless directed in writing by the cabinet. If the cabinet directs multiple directions for the Additional Site Survey, the formulated task rate will be applied for each direction directed. Therefore, no changes made.

(41) Subject Matter: Direct push injection.

(a) Comment: William Ackland, SRW

Direct push injection point added. Good! How about also adding a per foot increase for injection points over 30 feet in depth?

(b) Response:

The Division added language in the Contractor Cost Outline to accommodate for injection points over 30'.

(42) Subject Matter: Laboratory Analysis.

(a) Comment: William Ackland, SRW

Laboratory analysis. The USTB has catalogued a great deal of different analyses. However, the USTB has recently requested SRW conduct analysis for total petroleum hydrocarbons (TPH). Are there plans to add TPH gas and diesel ranges to the list (if so, please specify C ranges i.e. C₄-C₁₀, C₁₀-C₂₀, etc.)?

(b) Response:

A cost for TPH has been added to the Contractor Cost Outline.

(43) Subject Matter: Initial review of facility information.

(a) Comment: William Ackland, SRW

The initial review of facility information for a new eligible company entering into a contract for an existing facility is missing. Current regulations allow \$500 for a new contracting company to obtain and review a site file. Was this omission in the draft regulations intentional? The existing \$500 fee is inadequate for copying of large site files, let alone review time. But, something was better than nothing. If an initial file review is completely non-reimbursable, fewer consultants will be willing to take over site work unless the remaining work is sufficient to recoup the initial review costs. As a result, competition may be decreased. Also, when work resumes on the low ranking sites, the owner/operators may be hard pressed to find a consultant. Please restore a line item cost for an initial review,

(b) **Response:**

The Division disagrees. Due to the uncertainty of individual contractor employment, the Division is unable to verify appropriate reimbursement for this activity.

(44) **Subject Matter: Over-excavation.**

(a) **Comment: William Ackland, SRW**

Over-excavation report costs will be decreased from \$2,660 to \$1,905 (>500 yards) or \$500 (<500 yards). Granted, small excavations did not take the full \$2,660 (current rate), but did take more time than the \$500 which is proposed. Larger excavations took a significant amount of time to add up all tickets, double check to make sure manifests, weigh tickets and landfill records matched and were error free, and to generate and cross check all figures and write the report and recommendations. Invariably, the claim or technical reviewer would then find some point on which they would like additional information. As a result, for the larger excavations, the existing \$2,660 cost was adequate. Decreasing this to \$1,287 is not feasible. For smaller excavations, reporting time is in line with an intermediate site investigation. Therefore, reducing this cost to the range of \$1,905 is reasonable, but \$500 seems excessively low.

(b) **Response:**

The Division disagrees. The over excavation report submitted in response to a written directive requires only the information on DEP 4067. The management of weight tickets and manifests is not required for the submittal of this technical report. Those documents are required for claim submittal and these activities are non-reimbursable in accordance with 401 KAR 42:250.

(45) **Subject Matter: Over-excavation.**

(a) **Comment: William Ackland, SRW**

Also, directive amounts; reimbursement forms and calculations are in tons. If volume breakpoints will be retained for over-excavation report costs, then to be consistent, please list the breakpoints in tons.

(b) **Response:**

Tonnage will vary based on soil densities and moisture content. The Division has placed approximate tonnage equivalence in the Contractor Cost Outline.

(46) **Subject Matter: Corrective Action Reports.**

(a) **Comment: William Ackland, SRW**

Corrective action report costs have been decreased to about 60% of current rates. If the USTB desires a solid analysis of all reasonable options and a valid cost comparison, the existing rates are good. Implementation of the proposed draft rates would require a major decrease in the comparison and cost analysis work performed. This may very well result in the selection of inadequate or more expensive options or inflated cost estimates.

(b) **Response:**

The Division has reformulated the Corrective Action process. The selection of corrective action technologies or strategies will be determined as part of the CSM. The decrease in cost for the Corrective Action Plan is due to the decrease in the content requirements proposed. Much of the content of the Corrective Action Plan from 2006 is now in the

CSM. Please refer to the Corrective Action Outline for additional information. Therefore, no change.

(47) Subject Matter: Miscellaneous Task Report.

(a) Comment: William Ackland, SRW

The Miscellaneous Report cost has also been decreased from \$500 to \$476. Under the existing regulations, SRW has received multiple miscellaneous report requests. Reporting time for the bulk of these requests was on par with many Site Investigation Reports (currently reimbursed at \$1,465). Only a few Miscellaneous Reports could be completed for \$500. Therefore, decreasing the Miscellaneous report cost does not appear warranted, and a 50% increase (\$750) would actually be more realistic.

(b) Response:

The application of the Miscellaneous Report has been limited in the proposed regulations. Additional reporting costs have been added to address reports directed that warrant alternative reimbursement amounts. Therefore, no change has been made.

(48) Subject Matter: Daily Rate for Direct Push Rig.

(a) Comment: William Ackland, SRW

The daily rate for a direct push rig and crew is set at \$1,200, but \$2,273 is allowed under draft section 2.8. Why is there a difference? Furthermore, the day rate for a direct push rig and crew under the 1996 regulations was \$1,200. Current rates are now around \$1,500 per day.

(b) Response:

The \$1,200 is strictly for equipment and operator. The formulated task rate of \$2,273 includes the personnel and surveying time for bedrock soundings.

(49) Subject Matter: Water-level indicator.

(a) Comment: William Ackland, SRW

An electronic water-level indicator (\$20/day) and a water level indicator (\$12/day) are both listed. Since \$12 was the 1996 rate, is \$20 is the correct rate?

(b) Response:

The water level indicator rate has been deleted. The electronic water-level indicator rate will be maintained.

(50) Subject Matter: Written Directive Claim Request.

(a) Comment: William Ackland, SRW

The Written Directive Claim Request Form link only shows a signature page. According to proposed 401 KAR 42:250 7.4(b), directives will have an itemization of the reimbursable costs and a copy of the Written Directive Claim Form attached. Typical site investigation tasks (i.e. boring or well installation, access agreements and encroachment permits, site survey work, etc.) are not included on any draft form. Will the itemization be simply a list on a separate page, or will a form like the current DEP6066C be utilized? The latter would be preferable.

(b) Response:

An itemization of the reimbursable amount will be attached to the directive letter issued.

V. Summary of Action Taken by Promulgating Agency

401 KAR 42:250: Comments were considered and the following changes are suggested:

Page 5

Section 4

Line 9

After "above", insert "applicable screening".

Delete "allowable"

Page 6

Section 4(2)

Line 15

After "above", insert "applicable screening".

Delete "allowable"

Page 12

Section 7(7)(a)

Line 20

Delete ", less the anticipated salvage value".

Page 12

Section 7(7)(b)

Line 22

Delete ", less the anticipated salvage value".

Page 15

Section 9(1)(b)

Line 15

After "above", insert "applicable screening".

Delete "allowable"

Page 20

Section 12(1)(d)

Line 14

After "above", insert "applicable screening".

Delete "allowable"

Page 20

Section 12(2)(i)(i)

Line 9

After "above", insert "applicable screening".

Delete "allowable"

Page 30

Section 20(1)(e)

Line 18

After "DEP 6093," insert "July".

Delete "April".

Page 31

Section 20(1)(j)

Line 1

After "DEP 6090," insert "July".

Delete "April".

Page 31

Section 20(1)(l)

Line 4

After "Contractor Cost Outline," insert "July".

Delete "April".

The following changes were made to the form, which was filed with the Amended After Comments version of the administrative regulation:

The Contractor Cost Outline has been amended to increase rates and add clarity based on comments received.

DEP 6090 has been adjusted to accommodate for changes in the mark-up language.

DEP 6093 has been amended to remove language about salvage value.